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ABSTRACT

Testimony recorded in these hearings was presented by David Selden, President, American Federation of Teachers; Dr. Oliver Oldman, Professor of Law and Director of International Tax Programs, Harvard Law School; Allen Manvel, consultant on Government Finance and Statistics, Washington, D.C.; Ralph Nader, Public Interest Research Group, Washington, D.C., accompanied by Jonathan Rowe, attorney; Dr. John E. Coons, professor, School of Law, University of California; Dr. Mark Yudof, Professor, School of Law, University of Texas; and, Mrs. Sarah Carey, Assistant Director, Lawyers Committee for Civil Rights Under Law. (JM)

EQUAL EDUCATIONAL OPPORTUNITY—1971

HEARINGS

BEFORE THE

SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY

OF THE

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

EQUAL EDUCATIONAL OPPORTUNITY

PART 16B—INEQUALITY IN SCHOOL FINANCE

WASHINGTON, D.C., OCTOBER 5; SEPTEMBER 29, 30, 28, 1971

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INEQUALITY IN SCHOOL FINANCE

TUESDAY, OCTOBER 5, 1971

U.S. SENATE
SELECT COMMITTEE ON
EQUAL EDUCATIONAL OPPORTUNITY
Washington, D.C.

The Select Committee met at 10 a.m., pursuant to call, in room 1114 of the New Senate Office Building, the Honorable Walter F. Mondale, chairman of the committee, presiding.

Present: Senator Mondale.

Staff members present: William C. Smith, staff director and general counsel; Donn Mitchell, professional staff; Leonard Strickman, minority counsel.

Senator MONDALE. The committee will come to order.

This morning we have as our witness an old hand before our committee, Mr. David Selden, president of the American Federation of Teachers. We are very pleased to have you here with us this morning.

STATEMENT OF MR. DAVID SELDEN, PRESIDENT, AMERICAN FEDERATION OF TEACHERS

Mr. SELDEN. Thank you very much, Senator. Usually I would allow you to read my testimony at your leisure, but there are others present and if you can bear with me I would like to read it myself.

Senator MONDALE. That is actually better for me.

Mr. SELDEN. I have titled my presentation "The Marginal Child."

The insidious influence of the laws of economics on educational theory and tactics is little understood and seldom acknowledged. Yet this relationship is fundamental to any discussion of the quality of education. Money does not educate children; teachers and other educational workers do. Spending money on education will not in itself guarantee that children will be educated, but it is certain that children cannot be educated without it.

If we accept graduation from high school as the minimum definition of what constitutes "an education," American schools—even by their own standards—educate only half the children of the Nation. Half of those who enter first grade never make it through the 12th. Somewhere along the line they become dropouts, fallouts, or pushouts. The idea that half our children are not worth educating seems monstrous; and, yet, this is exactly the effect of what we are now doing. In effect, our school systems are based upon the concept of the "marginal child."

Marginal Child: Barely Worth Education Costs

In economics, the marginal product is that which is barely worth producing. The marginal child is that child who, in the judgment of our society, is just barely worth the cost of educating. Those who fall below that line—the submarginal ones—are rejected or discarded in exactly the same way submarginal products are thrust out of the marketplace; except that humans—unlike submarginal automobiles, soap, or breakfast foods—do not just disappear. They become a part of our unemployment welfare, crime, and riot statistics.

There are those who insist that the amount of money spent on educating a child has little or no bearing on whether or not the child learns. This is nonsense. The effectiveness of teaching depends on a number of factors, all or almost all of which are controlled by the laws of economics.

There are differences in the educability of children. There are differences in intelligence, for instance. While intelligence tests may not be reliable as fine-scale measurements of the learning potential of a particular child, they nevertheless give adequate information about gross differences in intelligence, and these differences do affect the educability of children. Some children are emotionally unstable or psychologically handicapped so that they are unable to function in a group setting without special attention being given to them. Hundreds of thousands of children are socially and environmentally handicapped. Even when the problem of cultural relevance of curriculum and materials is properly dealt with, so that such children at least understand the references in textbooks and other materials, they still have greater difficulty in learning than do children coming from more amenable environments.

The fact that some children will be able to escape the statistical predictions of success and failure, which could be made for their profile group, does not alter the fact that we are confronted with a massive problem. Thus, only a solution which takes this into account has any validity.

Much Additional Moneys Necessary

If we are going to reform our educational system so that—instead of educating 50 percent of our children—we educate 75 percent, or even 90 percent, tremendous amounts of additional money will be necessary. Even considering that the most effective and efficient methods are used, educating another 25 percent of our children will require a vast expansion of educational services. It is obvious that the amount of money per child will increase as we go down the range of educability. That is, the farther we get away from the typical child for which our schools are designed the more it will cost.

We have been educating the easier-to-educate and rejecting the others. The easier-to-educate are those who can adapt to large group routinized instruction. Children with special learning problems require extra service—small group or remedial instruction, psychological help, medical service, or just tender, loving care. Such services are squeezed out by the economic crunch within which our schools must operate.

The liberal Benthamite principle of "the greatest good for the greatest number" becomes a cruel engine of destruction when applied

to a school system with less than half enough money to do the job assigned to it. Under present conditions, a child who needs twice as much attention as another will be pushed aside, because if we educate him we are denying an education to two other, easier-to-educate children.

Economic Factors Control Schools

The following are some ways in which economic factors control what goes on in American schools:

1. According to the "Coleman Report," the most important single factor in a child's learning experience is his social milieu. Children from lower socioeconomic groups, when mixed in school with middle- and upper-middle-class children learn better without handicapping the learning of the other more favored children. Because of the segregated housing patterns, particularly in the northern big cities, the only way such a social mix can be achieved is by busing. Busing is expensive, both in capital outlay and operating costs. But, if schools are not integrated, even larger amounts of money will be required for compensatory education programs. We, therefore, reject as immoral the policy of the Nixon administration which would restrict the amount of Federal aid funds available for compensatory education programs; and, at the same time, prohibit use of Federal funds for busing.

Senator Mondale. What you are saying is that you accept the Coleman principle that one of the best ways of helping a child learn is, as early as possible, to put them into an environment of social and economic advantage, that interplay in such a classroom is very helpful?

Mr. Selden. Yes.

Senator Mondale. And you should also try to compensate that child for the disadvantages by a special enrichment program which may vary depending on what the child would need?

Mr. Selden. Give him a more intensive educational experience in school.

President's Strategy Says "No"

Senator Mondale. What you are saying is: That the President is saying "No" to both strategies?

Mr. Selden. Both. That is right. Dooming those children.

I do not know whether this is the point to interject this or not, but there is a minor point related to this problem. When the Elementary and Secondary School Education Act was adopted, we—the AFT—tried to get the U.S. Office of Education to recognize the principle—in keeping with the Coleman report findings—that total school programs were better than compensatory programs which tend to segregate children within a school. We tried to get the OE to say: That if half or more of the children in the school were poverty children, to be assisted by Title I, class size for the whole school could be reduced and the whole program of the school intensified.

Senator Mondale. So you do not separate them?

Mr. Selden. That is right, and this was accepted until just recently. I understand the rules have now been changed. Services supported by Title I funds may go only to "Title I children." I do not think it was done deliberately to segregate children within school, but I think the

rule change will have that effect. Furthermore, I do not think that the programs that try to pinpoint service to individual poverty children can be as effective as total school programs.

Senator MONDALE. We have heard a lot of complaints from Headstart teachers and parents—who presumably would appreciate the guidelines under Headstart—that they resent very much the welfare smell of Headstart. That is, for all the services being rendered, the child still walks into that Headstart program only because he is a loser. They would much prefer a broader program, as a matter of right, like public school for preschool children. That was the central dispute in the Comprehensive Child Development Act which the Federation supported. One of the key principles was that it ought to be for working people and poor people; but, together and not as a welfare program but as a matter of right. I was very heartened to see the way that principle received support on the Senate floor.

TOTAL SCHOOL PROGRAM

Mr. SELDEN. Well, so were we. Just one more on the aside that I raised, and that is that we are not in favor of allowing local districts to "salt" schools with a few poverty children. Then to use that as an excuse for reducing class size and putting in other types of enriching programs which really benefit the already favored children. But where a school is 50 percent—we would even go for a higher figure: 60 percent—composed of poverty children or children who come under the definition in Title I, we think the children ought to be mixed within the school. Once you do that you cannot reduce class size for the poverty children and not reduce it for the others. Thus, you really have to go to the total school programs.

Senator MONDALE. At the time Title I was being shaped, did you ever think of—I am sure you did—the possibility of defining disadvantage not in economic terms, but in terms of achievement; so that schools that had a high percentage of low achievers—whatever their racial or economic background—would be assisted? I think they would tend to be very close.

Mr. SELDEN. The number of emotionally disturbed children is highly correlated with social class.

Senator MONDALE. Absolutely.

Mr. SELDEN. And, of course, many in middle class and upper middle class districts have their own psychological assistance programs for children—support programs, remedial programs. It would be nice if we could put these programs in every school in the Nation but I think we have to take the most urgent problems first.

Senator MONDALE. Yes; and it is true from everything we have learned from our school finance experts, that Title I, for all of its failures, still principally goes to the poorest of the poor, and that is quite an achievement.

Mr. SELDEN. Well, it should be broader than it is.

Senator MONDALE. That is right, but I mean it still tends to go in relationship to need. There have been some illegal distortions here and there.

Title I Best Assistance Program

Mr. Selden. Title I is our best assistance program, in our view. [I am now continuing with my prepared statement.]

2. Shortages of funds inevitably force large-group instruction. Larger classes can be taught by a teacher if the children in the class are all of approximately the same learning ability. The teacher can then use mass methods of instruction. The basic effect of ability grouping, however, is to adapt the school to the learning rate of the child instead of intensifying the child's educational experience so that he learns at a faster rate. Consequently, children in the slower groups spend more and more time learning less and less.

The opposite of ability grouping is heterogeneous grouping, but smaller classes are required to teach varied ability groups. When children of greatly varying, learning ability are placed in the same class, much more individual attention from the teacher or other educational worker is required. Small classes inevitably require more teachers and other staff—unless the amount of classroom time for the child is reduced, in which case his learning would again be handicapped. Some of the differentiated staffing and team teaching schemes are simply based on this device incidentally. They intensify the learning experience for some children but they cut down on the total amount of classroom time by pooling the children in very large groups for quite long periods during the day. The more favorable the staffing ratio the more the cost per child, of course.

3. In addition to the cost factor described above, ability grouping raises a problem of racial discrimination. Socioeconomic class is highly correlated with race. Since learning rates are highly correlated with socioeconomic class, ability grouping results in segregating large numbers of black and other minority children in the slower learning groups.

4. Staffing ratios have a controlling effect on the organization of instruction within the school. In addition to the problem of ability versus heterogeneous grouping, there are also many other choices of methods and tactics available to educators. Most of these choices such as team teaching, differentiated staffing, and modular programing require a more favorable staffing ratio, not less. When money is tight there is no leeway in staff assignments and the more innovative and creative approaches to education are ruled out in favor of the tried and true methods of the past.

5. Economic factors have a hidden effect on curriculum offerings, particularly at the secondary school level. When small group instruction is squeezed out of the curriculum some of the more advanced courses in math, science, vocational and technical education, and fine arts are offered much less often, if at all. For instance, analytical geometry may be offered only once every other year instead of every year. If a student cannot fit the course into his program in the year it is offered, he is just out of luck.

6. The quantity and quality of instructional materials and equipment is restricted when the supply of money is restricted.

For instance, at the later elementary and intermediate levels, computer-assisted instruction has proved particularly useful for remedial teaching. But computers are expensive. Children cannot receive the benefit of such instruction if the school district does not have the money to buy or rent the machines.

Irresponsible To Deny Education Moneys

It is totally irresponsible to say that until we can find a way to educate children more effectively and cheaply no more money can be spent on education. No one denies that we need more research in education. No one can deny that children should be educated in the most effective and efficient way possible. But, until we find more efficient and effective ways to do the job, we have the moral responsibility to give our schools the money necessary to educate children on the basis of what we now know.

Senator Mondale. I don't know how it can be said that somehow, unlike most other things, money has no relationship to output.

Mr. Selden. That is why I dwelled on this at such length.

Senator Mondale. I notice many of the wealthy who make that argument do not risk their own children on that strategy. They either live in a rich suburb where there is a high per capita spending level or they send them to a private quality school where the per pupil expenditure is even higher. I would like to see a study of how many of our wealthiest send their children to schools that spend less than $1,000 per year per student. I bet you would find very, very few of them. Yet many of those same people say: "There is no point in spending money on education until we know better what to do."

Mr. Selden. Well, this is what the President of the United States said when he came out for the National Institute of Education—which may be a nice idea, it cannot hurt, I suppose.

Senator Mondale. But what he said essentially, as I recall it, is: "Let's not spend any more money on education until"——

Mr. Selden. We find a magic way to educate children.

Senator Mondale. Yes. But the interesting thing, of course, is that leaves the State and the local governments holding the bag. We have a figure that shocked me: From 1966 to 1971, the Federal Government has increased spending in the elementary and secondary schools by $900 million a year. In the meanwhile, State and local governments have increased spending for the same purposes by $15.7 billion and, of course, the percentage of Federal support has dropped from 8 to 6 percent. In other words, while we have been holding back at the Federal level, the State governments and the local governments are left holding that bag with all the inequalities of local tax support increasing the differences between the poor and the rich, with the State governments' efforts to generate revenues while retaining industry and with all the inequalities between the States—Mississippi has about $400 per capita; New York has $1,200.

So the Federal Government's abdication of its role of financial support of these schools has contributed enormously to inequality of education and enormously to the fiscal problems and tax problems at the State and local level. Would you not agree?

ADMINISTRATION RESPONSIBLE FOR PLIGHT OF SCHOOLS

Mr. SELDEN. Well, Senator, I think it goes a little deeper than that. I hold the present administration responsible for the present financial plight of our schools, not only because it has failed—because the President has failed—to back Federal-aid proposals, but also because of some other things he has done of a financial nature.

I suppose it is too much to ask an administration, that was elected by as narrow a margin as this one, not to play politics with any issue that comes along. But, the politics that have been played with the education issue have hurt every child in the United States. This is how it is done: The President—instead of conferring with the leaders of Congress, or with other responsible people, about ways to finance education—came out with a revenue-sharing plan which he well knew had no chance of adoption in this Congress. The revenue-sharing plan, however, gave a promise of money for nothing—free money. Under the influence of this offer of free money, State legislatures stopped increasing their support of education in the way they had been expanding such support, as you pointed out, throughout the 1960's.

As a result, not only have Federal funds decreased on a per-child basis—and funds from local sources dried up long before—but the effect of the President's announcement of revenue sharing has been to decrease the amount of support offered by State governments. They feel that if they can demonstrate a need they are going to get this free money. It is an insiduous interrelation of factors which is bringing our school system down around us.

Senator MONDALE. To the point that, incredibly, the other day the superintendent of the Philadelphia school system came in here and asked to be nationalized.

Mr. SELDEN. Yes. Well, I do not want to get into that right now.

Senator MONDALE. All right. I thought that was why you were here.

Mr. SELDEN. Well, we would not necessarily oppose it, but we think that if you just nationalize the big cities you are only confronting half the problem. Also, I doubt that the State governments are going to give up their jurisdiction over their big cities. They are not going to allow states within States to be created, so why talk about it? It won't happen. It is like talking about revenue sharing.

Senator MONDALE. I think he was trying to bring home the severe plight of his school system. Maybe it was a serious proposal, but I think he was trying to figure out how he could get the Federal Government's attention.

Mr. SELDEN. I think that is true.

May I return to my written presentation? Thank you.

One final point must be made concerning the effects of funding on the quality of education.

> 7. School systems which have favorable salary schedules, fringe benefits, and working conditions can be more selective in teacher hiring and can have greater flexibility in the choice of methods, techniques, programs, and structures. Good teachers can make otherwise ineffective teaching strategies successful, while poor teachers are apt to be less productive even though they may be going through the correct motions in a favorable setting. Acknowledging that there are differences in the effectiveness of teachers

does not justify the so-called merit pay schemes, however. Even assuming that we could agree on the degree of effectiveness of one teacher as compared with another, paying them differently would not do anything to change their relative productivity, but being able to hire better qualified and more promising teachers in the first place is a different matter. Those school systems who can attract more effective teachers will inevitably be more productive—quantitatively and qualitatively. Their students will receive better educational service as a direct result of the money spent by the district on its schools.

Distribution of Services

We now turn to the questions of where the money is to come from, and how it is to be translated into educational services, and how those services are to be distributed.

In talking about improving the financing of education, one must make the basic assumption that a much greater percentage of our gross national income must be devoted to this purpose. As a matter of fact, the United States ranks very low among the developed nations of the world in the percentage of national income given to education.

In 1970 the United States spent slightly under 6 percent of aggregate income for elementary and secondary school education. England spent 8 percent and the percentage of income spent by other countries varied upward. It would not be at all unreasonable for the United States to spend 10 percent of its gross national income for the education of the young. This would increase the total amount spent for elementary and secondary school education to 10 percent of $795 billion, or $79.5 billion, using 1970 figures.

In that year the United States actually spent $45.4 billion for elementary and secondary education, both public and private, with the Federal Government contributing approximately 8 percent of that total—about $4 billion.

Need $35 Billion Additional Funds

In other words, in order to make even this modest additional commitment, $35 billion per year more would have to be produced from somewhere. The question is: Where?

In addition to insuring intensive education for the children who need it most, a fair and equitable educational support program must require an equitable contribution from all taxpayers.

Our basic ideas were contained in the National Excellence in Education Act introduced in the Senate 2 years ago, sponsored by many of the members of this committee, including yourself. Our plan will be amended in light of the *Serrano* decision, and we will ask the sponsors to reintroduce it in the next session of Congress.

The plan, as amended, would have the following basic elements—we are willing to confer with anybody on this to modify our position if it should be desirable:

1. The average per-pupil cost of education, utilizing proper staffing ratios, would be pegged at $1,600 a year. This is averaging not only elementary school education which does not cost

as much per student hour as vocational and other secondary school education, but averaging them all out it would be pegged at $1,600 a year.

2. This amount would be achieved by a combination of Federal aid and State tax effort, since the locally levied property tax is no longer a reliable source of income.

3. Each State would establish a State educational fund. We make the following suggestions for raising the State share of this fund:

a. Each State would levy a 20-mill property tax based on State property assessing procedures audited by an agency to be set up within the U.S. Treasury Department. This is entirely feasible. There are some States who do have pretty good equalization boards and there are national associations of tax assessors, but due to all sorts of considerations—some of which were mentioned by a previous witness before your committee—tax assessors need overseeing not only by a State board of equalization of assessments, but also auditing by the U.S. Government, providing this kind of supervision could introduce a degree of fairness into the property tax which is not present now.

I have done some studying of this matter. I once lived in a school district where 90 percent of the tax valuation consisted of an automobile plant. Needless to say, the tax rate in that district was set at the State minimum needed to qualify for State aid.

Conflict Between Education and Jobs

Senator Mondale. Interestingly enough, often such districts have a potentially rich base but they do not dare really tax it under threat that industry would leave and the jobs would go with it. One of the few areas I have heard of that had the guts to stand up and risk that was the Minnesota Iron Range. For nearly 40 years, we had the best school system in the country—because we said we are going to educate our children. Within one generation, we were sending people to medical and law school and turning out corporate leaders and religious leaders. The story of the Minnesota Iron Range and what was done in one generation, with tremendous inputs of money to be sure—because those people had the courage to stand up and require the mining industry to pay—was really a fantastic story. It was unlike many mining areas in the west where the fear of losing the single tax base resulted in an era of low public spending which assured jobs which kept them alive but cheated the children in the process. Then when the mines were exhausted there was nothing left. Many of the most tragic areas in this country are right there. They ended up with nothing.

Mr. Selden. Right. The problems that Ralph Nader brought out, I can just attest to. When it comes to evaluating industrial property, how does a little locally elected assessor who has three clerks and three other people working in his office—how does he go down and assess an auto plant? Well, I will tell you how he does it. Mr. Nader is exactly right. He calls up the general manager of the plant and asks him what it is worth.

Senator MONDALE. "What would he like to pay?"

Mr. SELDEN. That is exactly right.

Senator MONDALE. It is pretty much like the United Fund when you call up and ask for a contribution.

Mr. SELDEN. That is right. We had a strike in Gary, Ind., last year that went on for 21 days in near-zero weather. The two sides were about $100,000 apart; and, all that time, sitting there within the confines of that school district, was the main plant of U.S. Steel. The thought often crossed my mind that if we only had that plant assessed a little higher, that strike would have been unnecessary.

REAL INEQUITIES ARE INDUSTRIAL/COMMERCIAL PROPERTIES

At any rate, I would not abandon the property tax. There are ways to administer the property tax and take the inequity out so far as the home owner is concerned. That is no problem at all. As a matter of fact, people that own older homes often get a tremendous break on the property tax and they can write it off on their Federal income tax. The real inequities are in the things that Mr. Nader pointed out: industrial and commercial property.

Under what I am proposing, the States would be permitted to levy an educational surtax on the Federal income tax. There are various problems with levying income taxes or progressive taxes in many States. If the Federal Government were to extend the opportunity to State legislatures to piggyback on the Federal income tax, then the legislatures could take the responsibility and the tax source would be there for them if they had the fortitude to use it.

Each State would be required to raise from sources other than the 20-mill property tax, such as the piggyback surtax, a minimum additional amount which would vary with the State's taxable wealth and income. I do not think that you can expect Mississippi taxpayers to raise the same amounts of money per child as New York or even Minnesota taxpayers.

Senator MONDALE. As a matter of fact, Mississippi is trying pretty hard in terms of generating money.

Mr. SELDEN. As a percent of income, their taxes rate up within the first 10 States.

Senator MONDALE. Yes.

Mr. SELDEN. Federal aid would be distributed to the States so as to make up the difference between the amounts raised by State effort and $1,600 per child, the amount we originally started with as a fair support level for educating all children.

Now, when it comes to spending the money, States should be required to present to the U.S. Office of Education a plan for distribution of educational funds to local districts in accordance with the educational need of the district. Educational need would be determined by means of a sociological index which would take into account such factors as per capita income, student mobility, student involvement in court proceedings, and other factors. These indicate social environment not conducive to education and shows that the educational experience must be intensified if you are going to get quality education for those children.

Local districts would be required to certify acceptable plans to their State agencies—with copies to the U.S. Office of Education—describing programs for intensive education for hard-to-educate children.

In other words, they get more money if they have greater need. They then have to tell their State agencies and the U.S. Office of Education what they are going to do with the extra money in order to educate their hard-to-educate children.

Finally, local districts would be required to comply with Federal laws and court decisions relating to integration and civil rights.

Quality Related to Funds

In summary, we have tried to show here that the quality of education is directly related to the funds devoted to education; differences in the educability of children must be taken into account in any system of education so that those with the greatest need receive the most intensive service; equalization of expenditures between States should be accomplished through a combination of required statewide tax effort and Federal aid; and funds must be distributed within States in accordance with educational need.

Senator Mondale. Thank you very much for a most useful statement.

You began by recounting some of the failures of our system as it operates today, the 50 percent of our student body who began first grade and do not make it to the 12th grade. There must be many children, however, that finally get what you might call a degree who really failed, too.

Mr. Selden. That is right. In referring to an education by our own standards.

Senator Mondale. So that probably you are understating the magnitude of the degree to which children, for whatever reasons, fail to reach their full potential and are cheated of their life chances as a result.

Mr. Selden. Yes. For instance most schools track children for college academic programs, vocational programs, or general programs when students get to secondary schools. The schools do this because they just do not have the manpower and facilities to give every kid a decent well-rounded education; it is not that they want to discriminate against or hurt children or shortchange them. The schools cannot do better because of the tremendous amount of effort and money required to educate the harder-to-educate children. So they put a little frosting on the cake and put it in the window.

Senator Mondale. We had several examples of school failures. Mark Shedd, superintendent of the Philadelphia schools, said that on any given day their truancy rate is about a third—in the average school, about a third of the students are out. Then he said in their 50 ghetto schools—I think these are elementary schools—two-thirds of the children are graded at 16 percent or below in the Iowa Basic Skills test. I asked him what that meant, and he said: "That means, in effect, two-thirds of those students in those classes could not possibly know what the teacher is saying." That is so abysmally below grade level that for two-thirds of the children the educational process just could not be working.

If that is true in most ghettos—and I would think that the Philadelphia school system is fairly typical for a northern central city, would you not?

Mr. Selden. Yes.

Senator MONDALE. There must be hundreds of thousands of children that just do not get to be a part of the educational process in any meaningful sense. Would you agree with that?

Mr. SELDEN. Yes. They do not drop out; they are never in.

Senator MONDALE. Would you have other examples that show the degree of this failure?

Mr. SELDEN. Well, I cannot cite statistics, but I know Mark Shedd, and what he said about the Philadelphia system is pretty typical anywhere you go. The ghetto schools just are not educating children.

PROBLEMS ARE ECONOMIC

I do not blame parents of ghetto children for being angry. They should be angry. I think their anger, however, is often misdirected. They ought to realize that their problems are mainly economic in origin. The environment the child lives in is determined by economics; and, when he gets to school the quality of his school service is determined by economics.

Senator MONDALE. The president of the New York City School Board testified before the committee and he was complaining about the situation in the New York Schools.

Mr. SELDEN. Right.

Senator MONDALE. So I finally said, "Well, what are you doing about it? You are the board president." He said, "There is nothing we can do about it." When the president of the New York City School Board feels unable to do anything, what is that poor black parent in the ghetto going to feel?

Mr. SELDEN. As a matter of fact, the president of the New York City School Board for many years was a leader of black parents in Harlem and he should know what he is talking about. He has probably been on as many marches and picket lines around New York as anybody.

Senator MONDALE. He just sounded utterly hopeless to me.

Mr. SELDEN. Well, you cannot improve education by giving the teachers or administrators kicks in the pants. You cannot say, "teach faster." It does not work. You really have to be sensible about this thing and put the money into the school system that will allow us to do a job.

I have a metaphor that I sometimes use. It is as though we were given a river a mile across and given the material to build a bridge halfway. Then people get mad because they fall in the water at the end of the bridge.

GO PART WAY TO MOON . . .

Senator MONDALE. I have used that same analogy. What if we, for example, gave the NASA $5 billion to go to the moon and they found out it costs $25 billion? Would we say to them, "Well, go as far as you can go and tell us what you see?" We did not say that. We said, "We will give you what you need. Now be careful." So they took $25 billion to get there, I think.

Because we must have a C–5A airplane, in 1 year there are costs overruns that exceed by $400 million all that we spent under Title I on the 9 million so-called disadvantaged children in this country.

I think justice in this Nation requires that we must have educated children and they must have equal education. It may be different education, but it must be equal in terms of achieving the life chances of that child—and we are enormously short of that goal.

I agree with you that a good chunk of the problem is money.

Mr. SELDEN. You can waste money in education, and a lot of it has been wasted over the years.

Senator MONDALE. I did not take your testimony to mean that there were not some institutional crises and lots of them, but the teacher has to make a decent salary or you are not going to get a decent teacher. If a child is hungry he has to be fed.

We heard the superintendent of the Inkster school system, which is an all-black system in a suburb outside of Detroit. He said they have classes in which they have no textbooks, they have science laboratories with nothing in them, and they are bankrupt to boot; and they are spending at the rate of $650 per capita while Grosse Point is spending $1,100.

So I believe that there is great merit to the need for a substantially increased role by the Federal Government in the support of our schools.

Mr. SELDEN. Senator, just let me add one other personal observation. A little over a year ago I took a week off from my regular job as president of the American Federation of Teachers and became a substitute teacher in the Kansas City, Mo., school system. Of course, the life of a substitute is never very pleasant, and you really have two strikes against you, if not three, when you walk into the classroom. But in that school system I presided over, as best I could, 5 different day's—different classes, most of them 10th-grade world history classes.

Most of those classes were one-textbook classes with no supplementary materials at all, and if a child did not bring his textbook, he was supposed to just sit there.

Senator MONDALE. What kind of a school was it?

Mr. SELDEN. I did not teach in any of the better schools. The teachers are not absent so much, I guess, in those schools, but they were schools where the harder-to-educate children were.

TWO-THIRDS VOTE FOR MILLAGE INCREASE

I do not know whether you know much about Kansas City as a town. I have never lived there myself, but I learned quite a bit about it. It is a place with a great deal of civic pride and yet, those people, five times in a row, have voted down a school tax increase.

Now, here is the peculiar part of it. Five times a majority of the people have voted in favor of increasing the taxes, but you have to get a two-thirds vote to raise the millage in Kansas City.

Senator MONDALE. We are used to two-thirds votes around here.

Mr. SELDEN. So it went down every time, and you have 10th grade classes with one textbook and no supplementary materials, and those kids are just waiting until they are old enough to get out.

Senator MONDALE. At 16 they leave.

Mr. SELDEN. Right.

Senator MONDALE. What is the per-pupil expenditure level in Kansas City, do you know approximately?

Mr. SELDEN. Well, in elementary schools it is about $500.

Senator MONDALE. You mentioned earlier that you support adequate research and from my work here, my impression is that it is certainly needed. The amount we put into research is very, very infinitesimal compared to industry, for example.

Mr. SELDEN. That is right.

Senator MONDALE. I do not know what we spend federally on research but——

Mr. SELDEN. It is not very much. Most of the research in education has been done by Ph. D. candidates. These people do not have the money to hire computer time or get large staffs to gather data. They usually work over the material that somebody else has acquired from somebody else.

There is very little basic research going on. The commission of the States is doing some on the national assessment program. There is some being done on contract, although a lot of that money has dried up.

There is now in progress a compensatory education study. It is a rather extensive one. It will do original research and I think it will be a very good study. But we are going to have to restrict the sample to 1,000 kids, which really gets down to the threshold of reliability.

EXPERIMENTATION

Senator MONDALE. What is your position on experimentation? We have experiments with the voucher system, and on Gary, Ind., and a few other places with so-called private contracting. There has been a movement called free schools. There has been the community school movement. School districts have experimented with introducing choice so that parents can send one child over here if they want an open school or open classroom approach, they could send him to someone else for sort of a hard disciplinarian approach, another school for vocational approach, and other choices trying to give the person who has only a public school option choices within that system.

Now, maybe what I have talked about, following the different categories——

Mr. SELDEN. They do in my group.

Senator MONDALE. Would you respond to that?

Mr. SELDEN. Well, we are very much in favor of experimentation in educational methods and structure of instruction within the school. We have endorsed and a lot of our prominent union people have been associated with many such experiments.

We support promising experiments. If it can be shown that an experiment is likely to produce something of value, we say go ahead. But we are not in favor of breaking eggs to see if you can put them back together again.

The voucher plan comes in that category in our view. We are opposed to educational vouchers. They are really not an experiment. They do not advocate any particular style of education or any new method or technique. They are merely a way to get public money into nonpublic schools. We support Title I which provides for public services to children in nonpublic schools, and we support that concept in general, but we do not support the voucher concept which, if it were widespread, would undermine public education.

It happens that I have written a piece on this question. Rather than trying to ad lib the whole thing, I can give it to you. I am rather proud of it. I also think it is balanced.

Senator MONDALE. Has that article been written?

Mr. SELDEN. Yes; it was published in the Teacher College Record last January.

Senator MONDALE. Would you submit that to us for the record.*

Mr. SELDEN. I will.

Senator MONDALE. What about contracting?

Mr. SELDEN. Going to performance contracting, we were very dubious about it in the beginning. The more we found out about it, the less we like it. We think that performance contracting is an invitation to the ripoff. Fly-by-night companies are formed and convince beleaguered school boards to give them contracts. The proofs of accomplishment are very often rigged, and many of the companies emphasize that they would not want to stay more the 2 years anyway under the so-called turnkey principle. They claim that all they are doing is showing you how to do things and then they are going to move on. Well, I am suspicious of that sort of operation.

Senator MONDALE. Have you had a chance to——

Mr. SELDEN. A project in Rhode Island was to be evaluated by a specified test. A couple of weeks before the test, the children were given practice tests which overlapped as much as 75 percent the test that they were given finally when the payoff test came.

Senator MONDALE. This was in Rhode Island?

Mr. SELDEN. Yes; it was in Providence, R.I., last spring. We hired some people to go up there and investigate. That contract is now being held up and being challenged.

BELIEVES PERFORMANCE CONTRACTING DOOMED

Introducing the profit motive into this cooperative enterprise of education simply confuses things. It promises people things that cannot be delivered and in the end, I think, performance contracting is doomed to failure.

The OEO had 16 projects for performance contracting. I looked at some of those and they were not bad, but the profit motive had very little to do with the success or failure. The creativity and inventiveness of the people that were involved was really what was carrying the project and they were doing this simply because they were energetic and creative people, not because they were going to get a 5 percent profit out of the deal.

Introducing this kind of incentive almost guarantees that you are going to enter into a long contest between profit seekers and governmental watchdogs that will introduce a false note into education.

Senator MONDALE. Have you had a chance to look into the Gary project?

Mr. SELDEN. No. We represent the teachers there in Gary and those in the project, too. Ninety-eight percent of the teachers are members of our union. Our union takes a dim view of the project. A recent evaluation which gave the project high marks we think is inaccurate.

*See Part 16D, Appendix 4.

Senator MONDALE. Can you dwell on that a minute, because there have been some very glowing national reports.

Mr. SELDEN. I cannot go into detail on this at the present time, but I can get the information after this hearing.

Senator MONDALE. You might submit some comments for the record?*

Mr. SELDEN. I will. Or if you like, I can easily bring members of our union who are involved in the project and have them talk to you.

Senator MONDALE. Have you had members of your union employed at that school?

Mr. SELDEN. Yes.

Senator MONDALE. Would you submit for the record your view of that and we will include that in the record.*

But let us take one of Mark Shedd's schools in which one-third of the children are dropping out or missing, and he claims two-thirds are just so far behind. Other than the broad restructuring proposals which you referred to, a massive reordering of national priorities to deliver fiscal equity, is there any shortrun structural or strategic approach that offers any hope for those children?

MORE EFFECTIVE SCHOOLS PROGRAM

Mr. SELDEN. I do not think so. I do not think that you can make bricks without clay. Our program for ghetto schools is called the More Effective Schools program. It is essentially based on improved staffing ratios so that class sizes can be reduced. The teachers in the school have time for planning and conferring with each other and for developing innovative new approaches. But, the More Effective School program adds about 50 percent of the cost per child to the school; and because we really are operating on the marginal child theory, we just do not come up with the money. The More Effective School program is actually in danger in New York City—not because it is not producing, it is producing—because it costs money. The city government and the State government do not want to come up with the money to educate these children.

Senator MONDALE. How many schools are involved in the More Effective School system?

Mr. SELDEN. Thirty-one in New York.

Senator MONDALE. Do those include high schools?

Mr. SELDEN. No. They are elementary schools, and I think this is really the site of our most serious educational problem.

Senator MONDALE. Has the number of schools gone down or is it the same?

Mr. SELDEN. It has remained the same.

Senator MONDALE. And what is the per pupil expenditure level there, if you know?

Mr. SELDEN. About $1,200.

Senator MONDALE. Has that risen or dropped?

Mr. SELDEN. It has remained about the same.

Senator MONDALE. And how long has the MES system been in effect?

Mr. SELDEN. It was originated 6 or 7 years ago. I am very proud to say I was the chief negotiator for the union when we negotiated the MES plan with the superintendent of schools.

*See Part 16D, Appendix 4.

Senator MONDALE. Would you submit for the record a short evaluation of what you think the More Effective School system shows; that is, what is happening to the money?

Mr. SELDEN. Sure.

Senator MONDALE. Would you do that?

Mr. SELDEN. Yes, I can do that. There have been several evaluations in the past 2 or 3 years which have given the plan very high marks. The first evaluation which was made 5 years ago—which we feel was erroneous—criticized the pupil progress in reading, but gave it high marks in other fields. Since then all the other studies have given the plan very high marks.

Senator MONDALE. If you have those evaluations easily available—we can get them I am sure—but if you have them, would you give copies to us for the record?*

Mr. SELDEN. Yes, I will.

Senator MONDALE. I would like, in addition, maybe a short letter, if you have time, indicating what you think it stands for in general terms.

Mr. SELDEN. I will be very happy to do this.

Senator MONDALE. I feel very strongly there should be no marginal children in this country. I think every child should have an opportunity to fully develop, and this Nation is not a just nation until that is true.

Mr. SELDEN. I used the term to shock, but I think nevertheless, it is accurate.

Senator MONDALE. Thank you very much for a most useful statement.

The committee is in recess, subject to the call of the Chair.

(Whereupon, at 11:10 p.m., the Select Committee was recessed, to reconvene at the call of the Chair.)

*See Part 16D, Appendix 4.

INEQUALITY IN SCHOOL FINANCE

WEDNESDAY, SEPTEMBER 29, 1971

U.S. SENATE
SELECT COMMITTEE ON
EQUAL EDUCATIONAL OPPORTUNITY
Washington, D.C.

The Select Committee met at 10:04 a.m., pursuant to call, in room 1318, of the New Senate Office Building, the Honorable Walter F. Mondale, chairman of the committee, presiding.

Present: Senator Mondale.

Staff members present: William C. Smith, staff director and general counsel; Donn Mitchell, professional staff.

Senator MONDALE. The committee will come to order.

This morning, continuing our discussion of school finance, we will hear from Professor Oliver Oldman, professor of law and director of international tax programs, Harvard Law School; and Mr. Allen D. Manvel, consultant on Government finance and statistics, Washington, D.C.

Mr. Edward Fort* is not yet here, but he will be with us shortly.

If you will please come to the witness table, we very much appreciate having you with us this morning.

Perhaps Professor Oldman could commence the testimony, if you will.

STATEMENT OF DR. OLIVER OLDMAN, PROFESSOR OF LAW AND DIRECTOR OF INTERNATIONAL TAX PROGRAMS, HARVARD LAW SCHOOL, CAMBRIDGE, MASS.

Dr. OLDMAN. You will forgive me for reading my statement this morning, but I deliberately made it a short one. Most of the sentences in it, I think, will come out better if I read, rather than summarize them.

Senator MONDALE. We appreciate that. That usually helps us as well. Proceed.

Dr. OLDMAN. Studies which set forth the unequal geographic distribution of the property tax base as a source of public school financing are well known, and I will not summarize them in any detail here.

In my first footnote, I enumerate the several Advisory Commissions on Intergovernmental Relations studies as well as two studies done by the Federal Reserve Bank of Boston. Unfortunately, the copies of the summary of the Boston bank study done by Steven Weiss have not arrived here at the committee room on time. They were sent and

*See Part 19B for Mr. Edward Fort's testimony.

were supposed to be appended to the paper, and I am sure will arrive very shortly.

Senator MONDALE. When they are received, the staff will review them for inclusion in the record.*

Dr. OLDMAN. In addition, one item that I would have added to the first footnote, I just came upon yesterday—because yesterday was the day that the September issue of the National Tax Journal was released. That reported on the seminar session held by the National Tax Association here in Washington at the end of July. And one of the papers there was presented by Dr. Paul Cooper of Maryland. And his paper called, "State Takeover of Education Financing," which is in 24 National Tax Journal at page 337, certainly ought to be added to any collection of references.

Not only does it survey the literature, but it gives us the hard facts and data with respect to the State of Maryland which might not otherwise be easily available to a large audience.

Senator MONDALE. The staff will review that information.

Dr. OLDMAN. Unequal distribution of property tax resources exists among the separate taxing jurisdictions within metropolitan areas, the jurisdictions within a State, and among the States. Examples of distributional extremes were presented in a recent study done by Steven Weiss for the Federal Reserve Bank of Boston.

In one State, there exist two districts which have the same school tax rates, but one is spending three times as much per pupil as the other.

In another instance, two districts are spending the same amount per pupil, but one is levying school taxes at seven times the rate of the other.

There are further examples along the same line in the footnotes to the *Serrano* versus *Priest* decision which I am sure you have all seen copies of.

PROPERTY TAX BACKBONE OF SCHOOLS

The property tax continues to be the backbone of public school finance and provides over one-half the revenue used to finance public schools in most of the United States today. And those were one-half of the property tax revenues that goes into financing the schools.

Inequalities in the distribution of the property tax base—that is, inequalities in the distribution of wealth among jurisdictions—accounts for a significant part of the unequal distribution of spending on schools.

Little is being done by Federal, State, and local governments to eliminate or substantially reduce these inequalities. Federal distributions of educational funds do little to compensate for interstate inequalities. Attempts by some States to distribute school aid in an inverse relationship to available local property tax resources have, as a whole, failed to compensate for intrastate inequalities.

And generally, nothing is done to equalize property tax base resources among independent jurisdictions located within the same metropolitan area.

Within some of the larger cities, the poorer areas suffer from a combination of discriminatorily high property taxes and discriminatorily low public services, especially in the schools. This particular

*See Part 16D, Appendix 5.

property tax discrimination was identified in a study done a few years ago by Dr. Henry Aaron and myself. Data used was for the city of Boston.

Senator MONDALE. If you would yield there, is it fair to say by way of generalization that whether one is looking at interstate differences, interdistrict differences within the State, or differences between rich and poor areas within a school district, it is almost uniformly the case that the richer areas have the most money and the poorer areas have the least?

Dr. OLDMAN. That is not only true, but correspondingly the amount spent on public schools is greater in these richer districts and richer States than is the case in the poorer ones.

EDUCATION MONEY SPENT INVERSE TO NEED

Senator MONDALE. So that the money for education today is flowing inversely to the need.

Dr. OLDMAN. Exactly.

In the study for the city of Boston, while the discriminatorily high property tax burdens in the Roxbury section of Boston may have occurred at least in part as the result of lethargic administrative practices rather than conscious discrimination against either the poor or the black, the fact of discrimination nevertheless appears demonstrated in the study. The study itself was published in the National Tax Journal in 1965.

Current litigation may resolve this property tax problem in Boston.

Similarly, pending litigation growing out of Mississippi—that is, the case involving the town of Shaw, the *Department* versus *the Town of Shaw*—plus the litigation in California to compel equal expenditure per student in schools within a State, may be a start toward solving the other side of this particular problem—namely, discriminatorily varying levels of public services to different areas within a given city.

The recent California decision in *Serrano* versus *Priest* has highlighted for the entire American public the concern over unequal educational facilities caused by inequality in the distribution of property tax base. However, in my statement today, I wish to emphasize that the courts, despite the California decision, are not likely to provide the solution to the general problem. Courts may strike down bad systems, but will not design and order good ones.

Legislative solutions, particularly at the State level, will be required if there is to be timely change in adequate amount.

Senator MONDALE. Would you yield there?

Dr. OLDMAN. Surely.

Senator MONDALE. Now, the *Serrano* case goes back to the trial court. If the court finds the facts substantiate the plea of the plaintiffs, presumably some remedy will flow. What kind of remedies or remedy would flow conceivably or logically from a finding that the plaintiff made his case on the *Serrano* principle?

Would it prohibit the payment of programs, by the States, State aid, in some way, or how would the court fashion a remedy to achieve the objective of the *Serrano* principle?

Dr. OLDMAN. I have not yet tried to think out all the possible remedies which the plaintiffs might request as well as the possible remedies which the court might grant. But let me suggest one at least.

If the State of California Supreme Court when the case comes back up again looks at the facts and decides that it still wants to take action to support its original decision, then one line of approach might be that used in New Jersey in the property tax equalization field and in some other States—namely, to issue prospective orders in the future which would order the State to change the system to bring about a greater amount of inequality, in this case the financing of schools. But then leave a period of perhaps 2 years or 3 years for the State to work out its own solutions and then come back to the court to see whether or not the court will accept that as a reasonable approach to the solution to the problem.

Senator MONDALE. In other words, the order would run to the Governor, I suppose, and the other appropriate State officials, saying it was found that the present system violated the Constitution—that they must shape remedies to achieve this described objective. The court would retain jurisdiction. Then, say 2 to 3 years after the legislature had had time to work on it, the court would take a look at what alternatives it came up with.

Now, suppose the State did nothing except continue its present program. Then what kind of remedy would the courts have? I assume all they could do was prohibit what the State was doing in some way.

DIFFICULT PROBLEM TO REMEDY

Dr. OLDMAN. This is one of the kinds of problems I do not really like to think about. It is difficult to imagine a suitable remedy. To my mind, the possibility of that happening at the very least, of course, allows the court to give an extension of the deadline which I suppose is the most likely first act.

But I also suppose that the possibility of that eventuality is one of the reasons why this committee and the Congress is and should be giving consideration to developing measures which might make that eventuality unlikely to come about.

Senator MONDALE. I think in general the courts are really the inappropriate agency to deal with the equities of school finance and school desegregation. Every time we abandon our public policy rule here in the Congress and leave the courts alone, they are left with really inadequate ranges of remedies to do the right kind of sensitive job.

I think the whole desegration field has badly suffered because of the failure of the Congress and State interests and others to do their part of the job. That is, I think what you are saying here, whatever the constitutional principle, surely the principles of social equity should require a broad reform of school financing.

LEGISLATIVE ACTION

Dr. OLDMAN. Perhaps the great service of the courts in this issue is to alert people to the concern of the courts and the willingness of the courts to enter into the fray. And that might be one of the important prods to legislative action which quite clearly is needed to work out careful solutions.

Senator MONDALE. I think it is quite clearly an additional strong argument for those who are proposing reform to say this may not only be the proper social policy, but it may also be a legal imperative as well. That is a nice additional argument.

Dr. OLDMAN. There is nothing like having the law on your side to win a case, even before a legislative body.

Senator MONDALE. It is nice to be able to say you should do this, and if you do not, you have to anyway.

Dr. OLDMAN. Exactly. And that, I think, is what the California courts are trying to tell us. We do not know yet what the Supreme Court will do on this. I suspect that it may be a good period of time before we get a full view of what the Supreme Court's response is going to be. So that the time for legislative action, certainly, is ripe at the present moment.

Senator MONDALE. Thank you.

Dr. OLDMAN. The legislative solutions as we have just concluded, particularly at the State level, in addition to the congressional level, will be required if there is to be timely change in adequate amount.

One approach, exemplified in proposals in the States of Maine, Michigan, and Vermont, is to finance public schools through the levy of a statewide property tax, uniform in rate and coverage. The approach can be implemented by State collection and operation, or by local collection with State supervision and equalization where necessary.

MASSACHUSETTS PROPOSAL

Another approach—that proposed by the Massachusetts Master Tax Plan Commission last fall—embraces two features. First, the percentage of State and local tax revenues to be raised by the property tax would be limited to a ceiling figure—about 40 percent.

Simultaneously, a uniform basic rate of property tax would be levied throughout the State. The proceeds of this levy plus other State revenues would go into a fund which would be distributed entirely to local governments. The local aid fund would be of an amount equal to 80 percent of all local government expenditures in the State during the preceding year; and would be distributed to the local governments by per capita and other formulas designed to have an equalizing effect.

This approach is broader than the statewide school property tax approach because it tends to equalize the tax burden of all local government expenditures rather than just school expenditures, and it restricts the growth of the property tax.

The Massachusetts proposal permits local governments to levy additional amounts of property tax for local government use. But only a part of the revenue raised by the additional tax levy inures to the benefit of the taxing locality. The rest becomes available for State distribution to poorer communities. The effect is to spread throughout the entire State the benefits of increased property tax levies in well-to-do communities.

Thus, if a relatively wealthy community wishes to increase the amount it spends on its public schools, it will find that some of the increased levies made upon its own taxpayers will be employed to finance increased services in other municipalities.

Senator MONDALE. Is that just a proposal at this point?

Dr. OLDMAN. This is now a proposal by a broadly based commission in terms of the political spectrum and interest groups. These are their tentative proposals. It has been announced that their final proposals will be issued in a fourth report, supposedly fairly soon.

I have no reason to doubt that they will repeat this particular proposal in their final proposal, but I have no information in any case one way or the other.

It should be emphasized that a fair system of educational financing——

Let me backtrack for a second. I did bring along an extra copy of that Massachusetts report, and perhaps it may be of some use to the committee if I leave even the tentative proposals here.

Senator MONDALE. Thank you very much.

Dr. OLDMAN. I will set these down for that purpose.

It should be emphasized that a fair system of educational financing need not jeopardize traditional educational interests at the local level. I have just noted that, under the Massachusetts proposal, a community may still make a decision to spend somewhat more or less on education than its neighbors.

Moreover, uniform property tax burdens throughout a State need not threaten decentralized decisionmaking. A community may stil, administer its own schools and make decisions on curriculum, facilitiesl and teachers.

STATEWIDE PROPERTY TAX UNIFORMITY

There are still other important problems which statewide property tax uniformity would help to solve. Two prime examples are metropolitan fragmentation and the provision of low- and moderate-income housing in outlying areas.

Most metropolitan areas consist of many small independent jurisdictions clustered around a large city. Economies of scale often indicate the desirability of fewer and larger jurisdictions with a resulting decrease in the overall per capita cost of Government services.

One barrier to governmental consolidation has been the inequality of tax base resources. A community with a relatively high tax base resists combination with a community having a relatively low tax base since combination would increase the property tax burden in wealthier communities by more than the savings realized through reduced costs of consolidated government.

Property tax reform which diminished the significance of tax base differentials would represent a significant step in lowering fiscal barriers to local government consolidation movements.

Property tax reform will also encourage the provision of low- and moderate-income housing in relatively high tax base communities. Suburban communities with high tax bases resist demands for low-income housing because they expect that the units will not contribute enough property tax to pay for the increased governmental services needed by the low-income residents.

The new housing units require the full range of urban services, the most costly of which is likely to be schools. As a result, these localities currently encourage low density, high-valued land use—luxury housing, clean industry, and shopping centers.

If one wanted to find examples of communities, I think one only has to look in the suburban range of almost any major large city in the country today to find the failure to build low-income housing in substantial amounts. Even in areas where State programs have

offered the local community funds to make up in part for the additional drain on the property tax, even in those cases, one finds communities reluctant to invite low-income housing in.

But at least they have the argument in a number of communities it is going to be costly to them, why should this particular local community be asked to bear the burdens of low-income housing when those burdens are not distributed evenly throughout the State.

The same data that is in *Serrano* versus *Priest*, for public school financing, the same data that is in the Weiss studies, is the data that supports the disparities in property tax base which lead to discrimination against having a low-income housing.

Senator MONDALE. Now, while that argument by a suburban community may mask racial views, in fact, standing on its own, there is an argument there, is there not? As long as that local community depends primarily upon real estate taxes to fund its services, including schools, to permit substantial numbers of low-income families in public housing or in low-income housing would not generate much by the way of taxes. They will, in fact, probably have a net deficit to pick up through the taxes on others to pay for their education.

That is undeniably true, is it not?

Dr. OLDMAN. There are a few States, such as Massachusetts, which are trying to work out programs which would compensate for this property tax deficit so to speak.

Senator MONDALE. But they have not worked it out.

Dr. OLDMAN. But it is not really worked out fully.

Senator MONDALE. We tried a couple of things. The Eagleton amendment which is now law provides impact aid for the children in public housing units as well as military facilities. If it were fully funded, that would mean $600 to $700 a head. That, too, I believe would be helpful.

But all that is trying to correct basically is the inequitable tax structure which is based on the vagaries of the present real estate tax system.

Dr. OLDMAN. Exactly. And if Federal and State measures would compensate for these vagaries, then a local community would be faced quite squarely with the problem of discrimination. And some constitutional questions might then be raised if they reject offers of low-income housing when the only reason is to avoid association with low-income people or people of different racial background.

UNIFORM TAX ELIMINATES OBJECTIONS

If property tax burdens were uniform throughout the State, however, and distribution of the proceeds were made on an equitable basis, the fiscal objections to low-income housing would largely disappear as we have just noted. Without any increase in taxes, the per pupil educational expenditures in suburban areas, for example, could be kept at the same levels as before the addition of the low-income housing to the community.

The principal point I have made so far is that statewide equalization of property tax burdens is an important forward step in solving the problem of inequality of educational opportunity. It is by no means the entire solution. It does not assure a sound distribution of spending on schools or other public services; nor does it assure the best possible distribution of tax burdens among the people of a State.

Far more attention, than has been given to date, needs to be devoted to designing intrastate distribution formulas; and, to developing the continuous supply of the facts and data needed to apply formulas, so as to produce the desired results.

Also, once statewide uniformity of property tax burdens is achieved, then the substitution of fairer statewide taxes such as the personal income tax for at least a part of the property tax becomes a practical possibility.

Senator MONDALE. If you will yield there, that statement implies that in order to be in a position to substitute a progressive income tax as an alternative to property tax for school services, one must first have a statewide property tax in order to practically substitute one for the other. Why could not a State say, "Well, now, we are going to pick up 75 percent of the operating costs of schools," or something—increase State aids?

Dr. OLDMAN. Of course, in principle, it would be possible for a State—which, for example, say 50 percent of the property tax revenues are used to finance the schools—to adopt legislation which would finance the schools by increased State taxes on progressive income tax base. That would lower the total property tax collections by perhaps as much as 50 percent.

While that is possible in principle, it is not difficult to see the vast shift in tax burdens that is going to be brought about as a result of such a switch.

SHIFT TO STATE PERSONAL INCOME TAX

The question arises how does one practically make that switch. Is it done in one law on 1 day or is it done by an orderly process of change in transition?

And what I am suggesting here is that it is more likely that we will get to the end result of the income tax as the source of school finance if we first make the property tax largely one of statewide uniformity. If one has observed the increase in property tax burdens in a number of communities in the United States today, particularly in our own area in eastern Massachusetts, one would find rates of increase on the order of 10, 15, and 20 percent per year. If statewide property taxes are levied, it ought to be possible to reduce the burden of the property tax at rates like 10, 15, to 20 percent a year and gradually shift it to the personal income tax without causing an undue amount of windfalls or an undue amount of hard-to-bear burden on groups who will be reluctant to bear it.

Senator MONDALE. If you choose your own tax structure for funding schools, which would you prefer—a statewide property tax levy as its key source or a statewide personal income tax?

Dr. OLDMAN. I have no hesitation in supporting the latter, the statewide personal income tax.

Senator MONDALE. And your reasons are?

Dr. OLDMAN. The fairer distribution of the burden among people in accord with ability to pay.

I might add that I have no hesitation in saying that a significant part of that burden also being borne at the Federal level in order to distribute that burden not only fairly among the people of the State, but among the people of the country as a whole.

Senator MONDALE. I will want to return to the interstate issue in a minute.

Dr. OLDMAN. Though great progress will have been made through the institution of these statewide tax and distribution measures, they do not eliminate fiscal disparities among the States. For this, Federal action is needed. Federal action is also needed to induce and speed up the needed intrastate tax and distribution reforms. The range of possible Federal roles, including the making of equalizing grants and the conditioning of grants on State reforms, is broad. I do not know how broad.

To find out, I urge an immediate Federal research effort. With the results of such an effort, the Members of Congress will be equipped to define and enact the Federal role in giving each child in this country a substantially equal opportunity for a decent education.

Senator MONDALE. Your proposal seems to be that, though the details are unknown, the Federal Government could have a substantial grant program to education based on two principles:

1. To try to equalize the difference in wealth between States, which can be very tough; and
2. Try to condition substantial aid to States on intrastate systems which distribute resources fairly in the school system.

Dr. OLDMAN. Exactly.

Senator MONDALE. You pass up the question as to how that might be done by saying we should appoint a commission. We have one now, have we not, on school finance? We have a commission, at least one commission, on any given subject going at any time. There are usually three or four. We have at least one in school finance right now.

I do not know whether they are dealing with this or not.

Dr. OLDMAN. The suggestion in any event, Senator, is much less one of appointing of a commission. I am aware of commissions working in and around this area. The problem is to get the remainder of the job of research done. It is being done in part by the Advisory Commission on Intergovernmental Relations. It has not had the opportunity to finish the job.

There are other Government agencies. And there is also the possibility of a congressionally organized research effort which would bring together the varied and many strains of thinking that are being carried out, are being done, on this subject today. The problem now is to get all the ideas together in a package and see what the full range of possibilities are, convert them into some judgments and estimates of what the impact would be so that some choice can be made among them.

FEDERAL ROLE IN REDUCING INTERSTATE DISPARITIES

Senator MONDALE. Do you not see a strong Federal role needed to assist in these interstate wealth differences? I think today the per capita expenditure of New York State is something like $1,250 per student, and in Mississippi approximately $400. So the ratio is 3 to 1.

Dr. OLDMAN. Some of those differences are, of course, accounted for by different levels of costs. But even when one adjusts for those, there are still substantial interstate disparities. And there is a Federal role in reducing those disparities.

Senator MONDALE. I am increasingly of the view that these massive central school systems—New York City, et cetera—are virtually unmanageable and that for the good of children we should have a policy to try to encourage them to remain in rural areas, try to encourage outmigration from these central cities.

It seems one of the central conditions of such a national policy must be quality rural schools, quality schools in the smaller communities.

And this has relevance particularly, it seems to me, for the poor Southern States which can tax their citizens to death and still not generate enough money for really moderate quality education. Would you agree with that?

Dr. OLDMAN. I agree, certainly, with the basic idea and the basic theme. I think that the problem is, if one just glances at the vast output of work of the education specialist in recent years, a considerable amount of disagreement among them as to what the meaning of quality is, what the meaning of the equality as well as quality is.

These problems of educational technology, of educational philosophy, are ones that continue to deserve at least as much attention as they are now getting, but that dispute, these differences of opinion, should not deter us from at least bringing about some equality in the one thing that we can do which is to equalize the resources, the money, that goes into the education of people throughout each State and more or less throughout the country.

PREPARED STATEMENT OF OLIVER OLDMAN

Studies which set forth the unequal geographic distribution of the property tax base as a source of public school financing are well known, and I will not summarize them in any detail here.[1] Unequal distribution of property tax resources exists among the separate taxing jurisdictions within metropolitan areas, the jurisdictions within a state, and among the states. Examples of distributional extremes were presented in a recent study done for the Federal Reserve Bank of Boston. In one state there exist two districts which have the same school tax rates, but one is spending three times as much per pupil as the other. In another instance two districts are spending the same amount per pupil, but one is levying school taxes at seven times the rate of the other.[2] The property tax continues to be the backbone of public school finance and provides over one-half the revenue used to finance public schools in most of the United States today.[3] Inequalities in the distribution of the property tax base, that is, inequalities in the distribution of wealth among jurisdictions, accounts for a significant part of the unequal distribution of spending on schools.

Little is being done by Federal, state and local governments to eliminate or substantially reduce these inequalities. Federal distributions of educational funds do little to compensate for interstate inequalities. Attempts by some states to distribute school aid in an inverse relationship to available local property tax resources have as a whole failed to compensate for intrastate inequalities. And

[1] Advisory Commission on Intergovernmental Relations *Fiscal Balance in the American Federal System* (1957), especially Volume 2, *Metropolitan Fiscal Disparities*.
——*State Aid to Local Government* (1969).
——*Urban America and the Federal System* (1969).
Steven J. Weiss, *Existing Disparities in Public School Finance and Proposals for Reform*, Research report to the Federal Reserve Bank of Boston No. 46, February 1970. A summary of the Weiss monograph, with data and suggestions for change, was printed in the January/February 1970 issue of the Federal Reserve Bank of Boston's *New England Economic Review* under the title "The Need for Change in State Public School Finance Systems." Copies of this issue are attached.
Coons, Clune and Sugerman, "Educational Opportunity": A Workable Constitutional Test for State Financial Structures", *57 Calif. Law Review* 305 (1969).
Coons, *Private Wealth and Public Education* (Cambridge: Harvard University Press, 1970).
[2] Weiss, *op. cit.*, page 23. See also the examples for the state of California in *Serrano* v. *Priest*, 96 Cal. Rptr. 601 (1971).
[3] Weiss, *op. cit.*, page 8.

generally, nothing is done to equalize property tax base resources among independent jurisdictions located within the same metropolitan area.

Within some of the larger cities the poorer areas suffer from a combination of discriminatorily high property taxes and discriminatorily low public services, especially in the schools. This particular property tax discrimination was identified in a study done a few years ago by Dr. Henry Aaron and myself. Data used was for the city of Boston.[4] While the discriminatorily high property tax burdens in the Roxbury section of Boston may have occurred at least in part as the result of lethargic administrative practices rather than conscious discrimination against either the poor or the black, the fact of discrimination nevertheless appears demonstrated. Current litigation may resolve this property tax problem in Boston. Similarly, pending litigation growing out of Mississippi,[5] plus the litigation in California to compel equal expenditure per student in schools within a state, may be a start toward solving the other side of this particular problem, discriminatorily varying levels of public services to different areas within a given city.

The recent California decision in *Serrano v. Priest* has highlighted for the entire American public the concern over unequal educational facilities caused by inequality in the distribution of property tax base.[6] However, in my statement today I wish to emphasize that the courts, despite the California decision, are not likely to provide the solution to the general problem. Legislative solutions, particularly at the state level, will be required if there is to be timely change in adequate amount.

One approach, exemplified in proposals in the states of Maine, Michigan, and Vermont, is to finance public schools through the levy of a statewide property tax, uniform in rate and coverage. The approach can be implemented by state collection and operation or by local collection with state supervision and equalization where necessary.

Another approach, that proposed by the Massachusetts Master Tax Plan Commission last fall, embraces two features.[7] First, the percentage of state and local tax revenues to be raised by the property tax would be limited to a ceiling figure, about forty percent. Simultaneously, a uniform basic rate of property tax would be levied throughout the state. The proceeds of this levy (plus other state revenues) would go into a fund which would be distributed entirely to local governments. The local aid fund would be of an amount equal to eighty per cent of all local government expenditures in the state during the *preceding* year and would be distributed by per capita and other formulas designed to have an equalizing effect. This approach is broader than the statewide school property tax approach because it tends to equalize the tax burden of *all* local government expenditures rather than just school expenditures, and it restricts the growth of the property tax.

The Massachusetts proposal permits local governments to levy additional amounts of property tax for local government use. But only a part of the revenue raised by the additional tax levy inures to the benefit of the taxing locality. The rest becomes available for state distribution to poorer communities. The effect is to spread throughout the entire state the benefits of increased property tax levies in well-to-do communities. Thus, if a relatively wealthy community wishes to increase the amount it spends on its public schools, it will find that some of the increased levies made upon its own taxpayers will be employed to finance increased services in other municipalities.

It should be emphasized that a fair system of educational financing need not jeopardize traditional educational interests at the local level. I have just noted that, under the Massachusetts proposal, a community may still make a decision to spend somewhat more or less on education than its neighbors. Moreover, uniform property tax burdens throughout a state need not threaten decentralized decisionmaking. A community may still administer its own schools and make decisions on curriculum, facilities, and teachers.

There are still other important urban problems which statewide property tax uniformity would help to solve. Two prime examples are metropolitan fragmentation and the provision of low and moderate income housing in outlying areas.

Most metropolitan areas consist of many small independent jurisdictions clustered around a large city. Economies of scale often indicate the desirability of

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[4] Oldman and Aaron "Assessment-Sales Ratios under the Boston Property Tax" 18 *National Tax Journal* 36 (March, 1965); reprinted and partly updated 4 *Assessors Journal* 13 (April, 1969).
[5] *Hawkins v. Town of Shaw*, 437 F. 2nd 1286 (5th Cir. 1970) (petition for re-hearing *en banc* has been granted).
[6] 96 Cal. Rptr. 601 (Supreme Court of California, In Bank, August 30, 1971).
[7] Massachusetts Senate, *Tentative Proposals for Master Tax Plan for the Commonwealth* (October, 1970).

fewer and larger jurisdictions, with a resulting decrease in the overall per capita cost of government services. One barrier to governmental consolidation has been the inequality of tax base resources. A community with a relatively high tax base resists combination with a community having a relatively low tax base, since combination would increase the property tax burden in wealthier communities by more than the savings realized through reduced costs of government. Property tax reform which diminished the significance of tax base differentials would represent a significant step in lowering fiscal barriers to local government consolidation movements.

Property tax reform will also encourage the provision of low and moderate income housing in relatively high tax base communities. Suburban communities with high tax bases resist demands for low income housing because they expect that the units will not contribute enough property tax to pay for the increased governmental services needed by the low income residents. The new housing units require the full range of urban services, the most costly of which is likely to be schools. As a result, these localities currently encourage low density, high-valued land use: luxury housing, clean industry, and shopping centers. If property tax burdens were uniform throughout the state, however, and distribution of the proceeds were made on an equitable basis, the fiscal objections to low income housing would largely disappear. Without any increase in taxes, the per pupil educational expenditures in suburban areas, for example, could be kept at the same levels as before the addition of the low income housing.

The principal point I have made so far is that statewide equalization of property tax burdens is an important forward step in solving the problem of inequality of educational opportunity. It is by no means the entire solution. It does not assure a sound distribution of spending on schools or other public services; nor does it assure the best possible distribution of tax burdens among the people of a state. Far more attention than has been given to date needs to be devoted to designing intrastate distribution formulas and to developing the continuous supply of the facts and data needed to apply formulas so as to produce the desired results. Also, once statewide uniformity of property tax burdens is achieved, then the substitution of fairer statewide taxes, such as the personal income tax, for at least a part of the property tax becomes a practical possibility.

Though great progress will have been made through the institution of these statewide tax and distribution measures, they do not eliminate fiscal disparities among the states. For this, federal action is needed. Federal action is also needed to induce and speed up the needed intrastate tax and distribution reforms. The range of possible federal roles, including the making of equalizing grants and the conditioning of grants on state reforms, is broad. I do not know how broad. To find out, I urge an immediate federal research effort. With the results of such an effort, the members of Congress will be equipped to define and enact the federal role in giving each child in this country a substantially equal opportunity for a decent education.

Senator MONDALE. I am going to have to take a short recess. We are having a short debate on the filibuster role, and I will be back in about 20 minutes.

(Whereupon, a recess was taken.)

Senator MONDALE. I am very sorry to keep you waiting.

Our next witness—and if your schedule permits, you can stay—is Mr. Allen D. Manvel, consultant on Government Finance, Washington, D.C.

If you will proceed.

STATEMENT OF ALLEN D. MANVEL, CONSULTANT ON GOVERNMENT FINANCE AND STATISTICS, WASHINGTON, D.C.

Mr. MANVEL. Thank you.

I appreciate the opportunity to appear before your committee. And like Dr. Oldman, I will work pretty directly from the written statement I have prepared as a matter of brevity and clarity.

My remarks draw upon 35 years of close working concern with taxation and governmental finances: First with the Illinois Depart-

ment of Finance where I concentrated especially on State aid to schools, then with the U.S. Bureau of the Budget, then for 2 decades at the Census Bureau in charge of its governmental statistics program, and more recently with the National Commission on Urban Problems and the Advisory Commission on Intergovernmental Relations.

Observations

I should like to offer eight observations as to the implications of the recent California court decision about public school financing:

1. It is the extent of reliance upon localized financing rather than the use of the property tax as such that lies at the heart of the problem the court tackled—namely, an unwarranted linkage between affluence and available school resources. This is evident if one considers what would have been found if local school districts in California had been required to rely for their primary support upon local sales or income taxes rather than local property taxation. Various local districts would have undoubtedly exhibited a wide range in per-pupil tax capacity on either of these other bases, as they do in the case of property values.

2. It thus seems likely that the decision, if it is upheld, will greatly speed the present generally gradual trend toward the substitution of State financing for local financing of public schools. Already, there is substantial State financing in a number of States, headed by Hawaii and North Carolina.

The Advisory Commission on Intergovernmental Relations has gone on record in favor of primary State responsibility for public school financing. Increased Federal aid, either in the form of grants for schools or general revenue sharing, might fill some of the gap resulting from a loss of locally supplied school money, but such aid can hardly be expected, I believe, in the near future to make up more than a minor fraction of the total sum involved.

3. In nearly every State, such a local-to-State shift of financing responsibility would involve a relatively large amount of money with a strong potential impact on the existing fiscal situation. This can be illustrated in nationwide terms by reference to data for fiscal 1969. If all the State governments that year had carried the school financing load being borne by local governments, they would have had to increase total State government expenditure by about 30 percent—a sum amounting to nearly half their total tax revenue that year, or to 1½ times all their general sales tax collections, or to more than double all their personal income tax collections.

This bears on the point that was previously discussed with Dr. Oldman—namely, that however desirable a change in this direction may be, there is a very large set of magnitudes involved in most States.

4. Much of the prospective extra State financing seems likely to be drawn from new statewide property taxes, imposed in lieu of traditional local school property taxes.

I believe I understand that your committee was to hear yesterday from Mr. Coons, one of the attorneys for the plaintiff in the California Case.

Senator Mondale. We did.

Mr. MANVEL. And I also understand that in a recent letter to the New York Times, he outlined an alternative device by which the requirements of the court decision could be met through a system that permitted local school districts to continue to impose their own particular property tax rates, with State-determined surplus amounts of the yield in affluent districts going to the State.

Senator MONDALE. It is not exactly clear to me how the city fathers in an affluent district will support increased tax levies when it is understood the money goes to other people.

STATEWIDE PROPERTY TAX

Mr. MANVEL. Well, I agree that is one of the reasons it seems to me somewhat more realistic, rather than this type of device to become very widespread and very important fiscally, to expect the simpler type of thing, the shift to primary reliance upon State-imposed taxes.

On the other hand, it is an interesting question. Some people may very well feel that it is not as in the past, when the choice was an unfettered one, and that otherwise there would be some further loss of direct localized control over the level of financing for schools, perhaps that type of an alternative will have more appeal than it has had in the past.

In any event, in my view, such a development of an increased reliance upon a statewide property tax for schools is not only probable, but at least in many or most States to a large extent desirable:

(a) because the alternative, involving an attempt to rely heavily upon other types of State tax sources (which have widely been increased in recent years), would push them greatly upward, in many instances to undesirable levels; and

(b) because a failure to substitute State for local property taxes would involve large windfall gains to property owners.

For example, one highly qualified analyst has estimated that in the absence of some offsetting action, the elimination of property taxes now imposed for school purposes in California would increase land values in that State by about one-fifth, obviously providing a great bonanza to persons in a position to sell real estate there.

5. These developments make even more evident the strong concern which State governments should have, but now often fail to evidence, for a sound and equitable system of property taxation.

As was pointed out nearly a decade ago in a landmark study on property taxation prepared for the Advisory Commission on Intergovernmental Relations by Drs. Frederick L. and Edna Bird, the States' concern for good property tax arrangements has been obscured by the fact that since the 1930's, relatively few State governments have made direct use of the general property tax for their own financing, but have left this revenue source to be used entirely by local governments.

But if the States, as I anticipate, return again to the imposition of statewide review for public school financing, the problems and

inequities that now result from intrenched faulty assessment systems will show up even more sharply than they do now, as matters that should receive State attention.

Property Tax Advice

6. There is no dearth of well-considered advice on some of the major steps that should be taken to improve property tax arrangements. A specific set of proposals on this score was developed by the Advisory Commission on Intergovernmental Relations as an outgrowth of the Birds' study.

In particular, the Commission called for State constitutional, legislative, and administrative action with regard to the legal coverage of the property tax, the assignment of responsibility for assessment, qualifications for assessors, the level of assessment and its measurement and reporting, and taxpayer remedies against discriminatory treatment.

In 1968, the National Commission on Urban Problems, the so-called Douglas Commission, generally endorsed the ACIR proposals and added some others. While qualified observers may differ on some details of these recommendations and as to how far or fast it may be possible to go, I believe most of them would agree that the steps proposed are very much in the right direction. I would strongly urge that your committee give careful consideration to the ACIR and Douglas Commission proposals.

7. Although the task of property tax reform clearly rests above all and most directly with the State governments, there is a strong national inerest involved. Most fundamentally, this interest appears where, as in the California case, the financing arrangements of State and local governments fail to meet the constitutional requirement of equal protection of the laws.

But there is also a national interest in the effectiveness of governmental institutions as such, including those at the State and local level. Where the latter, as now all too widely in the case of the property tax, clearly fail to meet urgent needs, the pressure mounts for the Federal Government to somehow take over or at least to adopt ameliorative measures.

Yet, its ability to do so is often hampered, in turn, by underlying deficiencies at the State and local level. To cite but one example with which I have had some direct familiarity: any effort to devise a Federal revenue-sharing system that would include reasonable adjustments on account of geographic differences in fiscal capacity and effort is vastly handicapped because it is so hard to obtain from property tax records as now maintained, meaningful data on the actual market value of taxable property in various areas.

8. Careful further exploration is needed of ways by which the Federal Government might stimulate State action toward the much-needed reordering of their property tax arrangements. One obvious useful Federal role, of course, concerns the assembly and reporting of basic statistics in this field, along the lines that are modestly reflected in the taxable property phase of the periodic Census of Governments.

Some major nationwide studies such as that by the Birds and the Brookings Institution volume by Prof. Dick Netzer took

advantage to an important extent of the census findings. Related State studies have also increased and improved in recent years. But much more is needed.

It is far from obvious to me what additional kinds of Federal action might be most feasible and productive. One proposal of the Douglas commission was that the Federal Government help to finance State-conducted assessment-ratio studies. Perhaps this approach might be broadened, for example, with Federal cost-sharing made available to assessing jurisdictions that meet particular standards of size and professional staffing, or for particular types of assessment and property taxing processes.

Expense Not Main Factor

No doubt lethargy and other factors rather than expense have been the main reasons for the limited extent to which States have improved their traditional property tax arrangements. But perhaps the availability of conditional Federal aid would tip the scale toward reform.

In considering this or other possible kinds of Federal legislation, I am sure your committee would benefit by advice from the staff of the Advisory Commission on Intergovernmental Relations, and of such organizations as the National Association of Tax Administrators, and the International Association of Assessing Officers.

Senator Mondale. Thank you very much for a most useful contribution.

I gather that you come down very hard on the side of a reform statewide property tax base for the financing of schools within, you might say, the *Serrano* principle. And I gather that Professor Oldman much preferred the State income tax approach.

Did I understand you correctly?

Mr. Oldman. I am not sure that we would be in any disagreement, given a sufficient period of time to reach the same end. I, too, indicated that as of the present time, I think that the statewide property tax represents probably the most useful next step to be adopted in the overall fiscal reform of financing public education. But I see still further steps along the road.

Senator Mondale. If the Federal Government tried to engage itself in reforming all the problems—assessments, evaluations, and exemptions—in the local property taxes, it just seems to me we would never, never solve them. Plus, is not the real estate tax—in my opinion—just one old common law indication of wealth and an outmoded one today? There are people who are very wealthy who have very little real estate.

It seems to me the income tax is a much fairer way and a cheaper way to tax wealth. Is it not?

Personal Income Tax

Mr. Manvel. I think that I would agree with Dr. Oldman in feeling a strong preference on grounds of equity for heavy reliance on personal income taxation rather than property taxation. But I would make three comments:

First, the equity of personal income taxation in concept exceeds that that we have been able to achieve in practice, as reflected by the problems and the loopholes of the Federal income tax structure.

Second, it is far less ideal than it sounds at first glance. And by the same token, I would say that the property tax is less undesirable in potential than it is in actual fact.

And third, I would add the fact that the property tax is already a very large producer of governmental revenue in the United States.

So finally, the point Dr. Oldman was emphasizing, moving from where we are to where we prefer to be is not a thing that is likely to be or can be extremely drastic, without involving great costs or windfalls that I think we would all agree would be unfortunate.

Senator MONDALE. Dr. Oldman, in your opinion, does the *Serrano* decision have risks in terms of possibly creating kind of a dull, uniform school system statewide? I think it is quite clear that there are school districts that are fabulously wealthy and which can produce incredible amounts of revenue on low effort. And there are school districts that are just the reverse. It is a very cruel and unfair thing.

And yet, many of those rich school districts have magnificent school systems for their children—what I would hope every child would have in this country.

Might it be that the *Serrano* principle, if moved to some kind of uniform State structure, might lift the poor districts up slightly and pull the quality districts down greatly and then just have kind of a dull public school system? In effect, the rich would go increasingly to private schools, and the poor would be left with the second-rate system and no alternative.

RESPONSE OF WEALTHIER COMMUNITIES

Dr. OLDMAN. I think that point of view is one that has to be taken into account. However, I think it underestimates seriously the extent to which our wealthier communities would be willing to devote additional resources to the school finance problem even if, for example, half of every additional dollar they put into it goes to some other community.

The wealthier communities are not yet really pushed very hard at all as indicated by all of the studies that have been done in terms of putting money into the schools.

It seems to be, nevertheless, quite clear that these communities are concerned about their schools and would go pretty far before they would let their quality deteriorate.

One would hope that a strong push toward equality—and I think there is a substantial likelihood that would happen—would result in the raising of the levels of spending on schools to the levels now being spent in the most expensive schools rather than reducing the better ones down to some mediocre average.

Last winter, I had occasion to talk to a very large group of people from Wellesley, Mass., one of our better heeled communities, about the master tax plan proposal for Massachusetts which I outlined earlier. And I pointed out to them that it would mean that the Wellesley people would have this problem of maintaining the quality of their schools which they could do only by taxing themselves much more heavily than previously and being prepared to let a portion of that increase go to finance schools in other districts.

And as near as I could tell in the open discussion that took place at the end of that meeting—and there were perhaps 750 to 1,000 people there—is the general sentiment was that they were prepared to do

that. They were prepared to live up to the responsibility that they thought that they faced.

Senator MONDALE. Where is that?

Dr. OLDMAN. Wellesley, Mass.

Senator MONDALE. Is that a college town?

Dr. OLDMAN. It does have Wellesley College in it, a well-known girls' school, has financial characteristics, some say, to Newton, Mass.

Senator MONDALE. Thank you very, very much for a most useful presentation.

This concludes our testimony for today on the issues of "Inequality in School Finance," which will continue tomorrow.

(Remainder of testimony given by Mr. Edward Fort on September 29, 1971, appears in Part 19–B.)

INEQUALITY IN SCHOOL FINANCE

THURSDAY, SEPTEMBER 30, 1971

U.S. SENATE
SELECT COMMITTEE ON
EQUAL EDUCATIONAL OPPORTUNITIES
Washington, D.C.

The Select Committee met at 10:18 a.m., pursuant to call, in room 1114, of the New Senate Office Building, the Honorable Walter F. Mondale, chairman of the committee, presiding.

Present: Senators Mondale and Javits.

Staff members present: William C. Smith, staff director and general counsel; Donn Mitchell, professional staff; and Leonard Strickman, minority counsel.

Senator MONDALE. The committee will come to order.

The committee continues this morning its hearings on school finance. We are very pleased to have as our witness today Mr. Ralph Nader. Good morning.

STATEMENT OF RALPH NADER, PUBLIC INTEREST RESEARCH GROUP, WASHINGTON, D.C., ACCOMPANIED BY JONATHAN ROWE, ATTORNEY

Mr. NADER. Thank you, Mr. Chairman. With me today is Jonathan Rowe, a lawyer who has been working in the property tax area with us.

Thank you for the invitation to comment on the relation of local property taxes to the lack of educational resources.

The property tax is still the mainstay of public school finances in the United States. Local governments provide 52 percent of all public school revenues in the country, and about 98 percent of that sum comes from property taxes. So, in discussing property taxes, we are talking in large measure about public education, and the resources available to pay for it.

BURDEN AT BREAKING POINT

Today, most homeowners and small property owners know that all too well. As property tax burdens have mounted almost to the breaking point, these taxpayers have attacked local school budgets and rejected school bond issues in self-defense. I was amazed to see how serious the crisis is.

For example, in Findlay, Ohio, which is a city of about 33,000 people, the schools are scheduled to close in a month because the voters voted down the school bond issue.

There would appear to be no more money in the property tax bill. But that is not the case. There are literally billions of dollars in

potential property tax revenues that State and local governments have not begun to tap, and much of which they can tap simply by enforcing the laws as they are already written. It is our estimate that at least $7 billion of property tax revenues can be collected which have not been collected every year.

This is not to say that the property tax is a "good" tax, nor that it should continue to be the backbone of the financing of public education. It is simply stating a fact. And this fact has implications for any method of financing local education, whether through the property tax or otherwise. The same interests that have turned the property tax from a means of providing services to the public to a means of serving themselves will be at work on any other taxing scheme that is devised.

Specific Representative Cases

I'm going to deal with a number of specific cases, but I'd like to say that these are not unrepresentative cases. They are not really gross deviations from what is occurring all over the country.

GARY, INDIANA

Gary, Ind., is in a fiscal crisis, and the Gary schools are bearing the brunt of it. They face a deficit of over $9 million, and other city services will meet substantial cuts. However, the city is not without wealth. The country's largest steel producer, United States Steel, has a major installation there, which could be the largest steel plant in the world. It comes close if it isn't.

Every Gary resident who breathes the air knows that it is there. But the city has not realized the benefits from United States Steel's presence that it should. The property tax is the means Gary has for getting its legitimate share of United States Steel's wealth. But United States Steel has been stronger than Gary's property tax.

The company has a very self-accommodating arrangement in Gary. Under Indiana law, industries present their own assessment to the local assessor, who is supposed to check it by the means provided him. But United States Steel withholds from the city any information by which its assessment can be checked. It will not open its books to the city controller or assessor, or even provide figures on capital investments and depreciation schedules.

Gary, Indiana, assessor, Mr. Tom Fadell, claims he sent a C.P.A. to United States Steel's corporate headquarters in Pittsburgh to see a capital investment breakdown for the Gary works. They told the C.P.A. they don't keep such breakdowns by individual plant location, Mr. Fadell says. Yet, somehow United States Steel is able to provide just such a breakdown for Los Angeles County in California. United States Steel also refused to submit the data required by law for individual building permits, since such data would reveal how much its additions and improvements are worth. Instead, it decides how much it owes for permit fees and writes the city a quarterly check.

I might say, Mr. Chairman, that the behavior of United States Steel in Gary, Ind., almost bespeaks of a 19th-century retrograde performances. I have never seen such raw repugnance and raw repudiation of local laws and the utterly futile attempt by local officials to enforce that law.

Just as a minor aside, the steel plant is a massive polluter of the whole city and the public health officer in Gary, Ind., had to go to the extraordinary length of getting into his car, starting the siren, heading for the gates of the plant in order to get in and sample some of the water that is being polluted on the banks where United States Steel has the plant. The corporate arrogance here has to be seen to be believed.

The managers of the plants make a regular practice of calling any local residents—who challenge the pollution and the lack of obeying the property tax laws by United States Steel—Communists, Reds, pinkos. You wouldn't think anything existed anymore at that level of performance, but it so does involving one of the country's blue chip corporations.

Needless to say, United States Steel has not been overly harsh in assessing itself. Since 1962, it has put close to $1 billion worth of new equipment into its Gary works, yet during that time its personal property assessment has risen by only about 2.5 percent of that amount, and its real property assessment has gone up far less than even the amount it has revealed to the city building department in its quarterly payments.

United States Steel is not the only underassessed industry in Gary. In 1968, an Indiana State Tax Board audit of Calumet Township found that 175 of the 181 businesses checked had been underassessed a total of $32 million. The tax board raised United States Steel alone $27 million. This underassessment has not only deprived the Gary schools of revenues, it has actually burdened them with more costs.

The school district can issue bonds only up to a set percentage of its total property tax assessment. After it reaches that limit it must resort to more expensive means of financing. Gary has incurred millions of dollars in extra school financing costs because underassessment of business and industrial properties crimped its bonding limit to a much smaller figure than it should have been.

And, of course, it is the small property owners who have borne the crush. Since 1960, the average Gary homeowner's tax bill has tripled; United States Steel's has gone up by one-third.

APPALACHIA'S STARVED SCHOOLS

If underassessment has helped to put the Gary schools into a bind, it has literally starved the schools in Appalachia. Little needs to be said here about poverty in Appalachia, but much should be said about Appalachia's wealth. Appalachia, Dun's Review has said, suffers from an "embarrassment of riches." It is one of the richest mineral regions in the world.

In 1965, Kentucky alone still held about 27.8 of an original 35 billion recoverable tons of coal. Three hundred ninety-six million dollars worth of coal was mined out of Kentucky in 1968. There is so much oil, coal, timber and gas in some parts of Kentucky that 30 attorneys have worked full-time in one Kentucky town of 6,000 just separating out the mineral rights to individual parcels.

But the people of Kentucky do not share in this wealth. It was bought up by outside interests long ago for from 50 cents to $5 an

acre. The list of owners now includes such names as United States Steel, Bethlehem Steel, International Harvester, Ford Motor Co., and National Steel.

Mechanization, and especially strip mining, have meant that fewer and fewer Kentuckians can even earn wages mining the land. And since the coal owners virtually escape paying property taxes, the imposed impoverishment of the coal regions is just about complete.

KNOTT COUNTY, KY.

As in Gary, the underassessment of coal begins with self-assessment. Local assessors have no idea who owns what and how much it is worth. The owners of the coal-bearing lands simply tell their version of what they own, where, and its value. And, as in Gary, the ill-equipped, frequently untrained local assessors have no way to check the owner's statement. The "tax commissioner" of Knott County, Ky., described the process thus to the St. Louis Post-Dispatch:

> The coal companies pretty much set their own assessments . . . We have no system for finding out what they own. Like they may tell us they own 50 acres at a certain place, when actually they own 500 acres . . . If a company says an area is barren or mined out, we have to accept it.

Or as one local tax commissioner told the Appalachian Lookout:

> People (meaning coal companies) just paid what they thought they should. Still do, mostly.

PIKE COUNTY, KY.

This system is not exactly airtight. In fact, a good deal of rich coal property—one authority puts the figure at "tens of thousands of acres"—never gets onto the tax rolls at all. A factfinding team appointed by the Pike County, Ky., school board in 1967 found that 40 to 60 percent of the county's land was either unlisted or underassessed. That year the Pike County schools had a deficit of almost $113,000 and 45.3 percent of the people were below the poverty level. Yet, at the same time, $65 million worth of coal was being hauled out of that very county.

While the Federal Government has spent millions to wage "war" on poverty in Appalachia, an agency of the Government has helped exploit Kentucky's failure to even get its coal property onto the property tax rolls.

BELL COUNTY, KY.

According to the Kentucky lawyer-historian, Harry Caudill, author of "Night Comes to the Cumberlands," the TVA a few years ago took title to the land of a defaulting coal supplier. In such cases, Mr. Caudill says, the law requires the Tennessee Valley Authority to pay taxes at the same rate that was paid during the 2 years before its acquisition. But since, as it turned out, this land had never been recorded or assessed, the former tax rate had been zero. So, now, we are told, the TVA owns and pays no taxes on 8,800 acres of farm and coal land in Bell County, Ky. And, meanwhile, Bell County is able to pay only 5.7 percent of its public school costs—a whopping $34 per pupil per year.

But even when Kentucky coal land does get onto the tax rolls, the owners, some of the largest and most profitable corporations in

the Nation, pay hardly a pittance. And I quote—again, that same Louisville Courier-Journal in an article in 1965, "Thousands of acres of coal land worth $200 to $300 an acre get on the assessment books at $2 an acre."

KNOTT COUNTY, KY.

For example, National Steel Co. currently is developing a huge new mining complex on 14,200 acres of coal land in Knott County. It is building a large, ultramodern tipple and a preparation plant that is expected to produce 1,250,000 tons of first-quality coal annually. A new railroad is being built to get at this coal. The owner of this tract of coal land, Elkhorn Coal Corp., has paid its shareholders a staggering 35 percent of its gross receipts in dividends. Yet, Elkhorn Coal Corp. has been paying Knott County taxes of less than 22 cents per acre on land so rich as to warrant the new railroad and preparation plant.

HARLAN COUNTY, KY.

Or consider Harlan County, where United States Steel has strip-mined the Big Black Mountain, the tallest in the State, into a "colossal wreck." In 1966, more than $30 million worth of coal was mined out of Harlan County, and United States Steel's subsidiary, United States Coal and Coke, was the county's largest single producer. United States Steel paid taxes of only $34,500 to the county on two producing mines valued—probably by itself—at $9,300,000.

In Arizona, United States Steel would have paid almost 10 times as much on the same operation. With that much extra revenue from United States Steel alone, Harlan County could have provided close to twice the $41 per pupil it could afford in 1968 for education. Still not much, but at least a start.

PERRY COUNTY, KY.

In Kentucky, property taxes levied are not always property taxes paid. Several years ago a reporter from the Hazard, Ky., Herald found that large mining companies owed Perry County over $75,000 in back taxes. The New York Mining Co. alone owed over $4,200. Apparently, the county was making no effort to collect.

TENNESSEE

And throughout Appalachia, the story is the same. The people are poor, the schools are poor, but the owners of coal land enjoy a property tax field day. Tennessee's five most prolific coal counties, which produced 6 million tons of coal in 1970, are losing several hundred thousand dollars per year in property tax revenues, according to a study done at Vanderbilt University last summer. Coal landowners control over one-third of the total land area of the five counties, but they provide less than 4 percent of the property tax revenues. One owner collects royalties of $4,500 per week on land assessed at $20 to $25 an acre—the same value the county assigns to unused woodland and one-quarter of what it assesses farms!

Pattern Same Throughout Country

The pattern continues across the country. Our files are filled, Mr. Chairman, with examples and documentation of this explicit means of corporate crime; this willful and knowing refusal to pay the most bare minimum property taxes to support local services such as education.

MAINE

The largest and wealthiest corporations flout or evade the property tax laws, victimizing the public schools. A report released recently by a team of law students led by Maine lawyer, Mr. Richard Spencer, disclosed that Maine has been losing over $1 million annually in property tax revenues because its timberlands are underassessed.

According to the report, the State property tax division does not even have a trained forester to check the work of the private appraisal firm, James W. Sewall, Inc., that assesses the timberland under contract. The president of that appraisal company, which also performs substantial private work for the timber companies, is Mr. Joseph Sewall, chairman of the Appropriations Committee in the Maine State Legislature.

AUGUSTA, GA.

In Augusta, Ga., a so-called "Committee of 100" of prominent citizens touched off an epidemic of underassessments some 10 years ago by offering illegal tax concessions to firms as an inducement to locate there. The concessions were supposed to be temporary and available only to new industries, but nobody enforced these restrictions and in time the prominent "100" had filched, according to the Richmond County Property Owner's Association, $300 million worth of property from the assessment rolls. Meanwhile, many of the county's schools are on double sessions and there is a shortage of 147 classrooms, not including 119 "nonstandard" ones.

I might add that oftentimes, the worse situations in property tax nonpayments occur in company towns where the main potential revenue for schools come from the principal plant that dominates that little town's economy, such as a paper mill.

TEXAS

School districts in Texas have fared little better. In the Permian Basin the underassessment of oil and gas properties belonging to some of the world's largest producers has cost one school district alone at least $1 million a year for the last 7 years. A 1970 study of oil and gas properties by Texas University law students in Ector County, Tex., found that producing properties were undervalued by about 56 percent, and that nonproducing property which Texaco had leased for $460,500 was not on the assessment rolls at all. I want to emphasize that—it was not on the assessment rolls at all. You couldn't get a more raw violation of the law.

Homes, on the other hand, were assessed at very close to actual market value. A private appraisal firm, Pritchard & Abbott, did the assessing for the taxing districts. That is, the taxing districts don't even do their own assessing. They hire out to a private appraisal firm.

And a survey of timberland in six counties and four school districts in east Texas by the same group of law students disclosed a pattern of underassessment which, if projected over the entire 37 county east Texas region, signified a loss of approximately $38.4 million in local revenues each year. In the Newton Independent School District alone, six companies, including Champion-United States Plywood and the Kirby Corp., underpaid by more than $133,000 in 1969.

I'd like to submit for the record, Mr. Chairman, a copy of the law student's study dealing with the Permian Basin in west Texas.

Senator MONDALE. It will be included in the record.*

Mr. NADER. Thank you. I must say, also, when I started to look into the property tax situation back in the spring of 1970, I had no idea of, first, the enormously widespread violation of payment of these property taxes by large land and building owners, but also, the widespread number of local taxpayer groups who have been striving for reform in this area in order to permit a more even application of the tax. I could call it very easily the number one political issue at the local level for middle-class America. There's no question about that in my mind at the present time. This is an issue which because it doesn't have a national reflection doesn't get very much national attention, but just look at the local papers.

SERRANO VS. PRIEST DECISION

The California Supreme Court decision that helped occasion these hearings would tend to put the financing of local education onto the State level. The nationwide pattern of underassessment and undertaxation suggests what such a shift might and might not accomplish. It probably would bring more uniformity to the funding of education within a State, but it would not by itself provide more equity for the small taxpayer vis-à-vis the large beneficiaries of property tax largesse.

The implicit subsidizing of the politically and economically powerful would probably continue on the State level, overburdening smaller taxpayers and diverting needed funds from the public schools and other needed services.

The States themselves have been at least silent partners in much of the systematic undertaxation, the magnitude of which has barely been suggested. Weak local property tax administration, and a lack of effective checks and appeals procedures for the small taxpayer, isolates abuses from public scrutiny and pressure and lets them flourish.

Weak property tax administration, and an absence of procedures through which citizens can protect their interests, do not just happen. A State legislature must establish and then preside over them. Property tax administration in Kentucky† is a shambles because in a manner of speaking, the State legislature has wanted it that way.

*See Part. 16D, Appendix 6.
†See Part. 16D, Appendix 6, Senator Muskie's letter and enclosures.

INDIANA

Yet, in case after case the States have gone still further and have granted explicit favors to large powerful interests through the property tax. In Indiana, for example, the State has played an active and eager role in the underassessment of large steel mills. The State board of tax Commissioners, appointed by the Governor, issues regulations to local assessors and puts out manuals for their use.

The Indiana State Board has issued so-called "Regulation 16," which sets an extraordinarily rapid depreciation schedule for industrial machinery. Regulation 16 almost amounts to an administrative repeal of Indiana's business personal property tax on new equipment. It would appear the people on the State board were not thinking of the Gary schools when they wrote this regulation.

CALIFORNIA

What Indiana has done for steel, California has done for land. Under a so-called "open-space" act, California has granted favored assessment treatment to some of the largest and wealthiest landowners in the country. The J. G. Boswell Co. is a prime beneficiary, realizing a property tax subsidy from other taxpayers in the State of almost $300,000 per year on its 65,650 acres in Kings County. The J. G. Boswell Co. has another distinction. It receives the largest single Federal farm subsidy in the Nation—$4 million a year. This is double-barreled regressivity with a passion. Nor has California forgotten its businessmen. Recent legislation billed as "tax reform" included a 15-percent property tax exemption for business inventories.

MINNESOTA

Minnesota has treated the taconite industry with similar generosity. It is exempt from the State sales and corporate income taxes, and a 1964 referendum insured it of favored treatment under occupation, royalty, and excise taxes for 25 years. The industry is still subject, however, to the State production tax, which Minnesota levies in lieu of an ad valorem tax on real and personal property used in production.

Until 1969, Minnesota kept this production tax at only 6.5 cents per ton, and that year it raised the rate to a still-low 12.5 cents—effectively 12.5 cents, that is. The producers, among whom United States Steel is prominent—I believe that company has about 25 percent of the taconite production in the State—have avowed they require this special treatment to survive on the world market.

The Stanford Research Institute of Menlo Park, Calif., was commissioned to test these avowals by Mr. Gino Paulucci. I'm sure you are familiar with him. The report, entitled "The Effect of Higher Production Taxes on the Minnesota Taconite Industry," found that Minnesota could actually increase its production tax on taconite to 50 cents per ton without affecting the industry's output; and that even larger increases, though possibly affecting yearly production, could result in still larger revenue gains. Overall, if the tax were increased all the way to $1 per ton, Minnesota could realize more than $40 million a year in additional revenue, and if this amount were applied to

matching funds programs, the figure could grow to $200 million or more.

The taconite producers still enjoy, on top of their other exemptions, a special low production tax rate. But in the next 2 weeks or so the Minnesota State Legislature will consider a proposal to raise the tax to 50 cents per ton.

MONTANA

Many other States have built subsidies for the powerful into the property tax system. In Maine, it is the State that underassesses timber properties. And further, a State-devised scheme of levying property taxes on timber effectively shelters the large timber owners from the revenue needs of the more populated areas. The Montana State constitution provides that mineral lands be assessed at the price at which they were originally acquired from the U.S. Government. The study at Vanderbilt University mentioned earlier found that the assessment manuals the State of Tennessee issues to local assessors do not even give directions for valuing mineral interests and mining equipment.

The study also found that the five counties in question, from which absentee corporations were extracting vast amounts of coal, had contracted with a private firm to conduct a total reappraisal. The contracts, entered into under the direction of the State Board of equalization, specifically excluded the reappraisal of coal interests, even though these are the counties' prime source of wealth and even though Tennessee law clearly requires that they be assessed.

What bodes even worse for the small taxpayer, and for the financing of education at the State level, is that entire State tax systems are increasingly skewed to favor the very interests that have fared so well under the local property tax.

PRIME EXAMPLE

Kentucky, again, is a prime example. We have seen how decrepit local property tax administration allows Kentucky coal companies to pay just about what they please. Kentucky has not enacted a severance tax to recoup these property tax losses. The coal interests do not want it so Kentucky does not want it.

But, while catering to the coal owners, Kentucky has hit the individual taxpayer very hard. Studies introduced during the recent National Education Association's investigation in Kentucky disclosed that, measured against 50 State averages, Kentucky has overutilized the general sales and individual income taxes, and has underutilized, among others, the corporate income, general property, and severance taxes. Equipment and supplies, incidentally, used in coal mining are carefully excluded from the sales tax.

"The State has emphasized," one of the reports concluded, "the kinds of taxes that bear most heavily on individual and family incomes." Imposition of a 5-percent severance tax and of a certain level of corporate income tax, the studies showed, would have raised an additional $55 million, close to the $61.7 million the Federal Government contributed for education in Kentucky in 1969.

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Favorable Tax Climate Damaging Public Services

Kentucky is not unique in leaning on the taxes that hit the little man the hardest. The States are vying to offer favorable tax climates that will hold old industry and lure new industry in. But a tax climate which suits business is not always the one which can provide the public services, including education, that the people need. What the businesses won't pay falls upon the individual taxpayer, or is not paid, period. And as brewing taxpayer revolts across the country show, individuals have borne about as great a taxload as they can.

In its concern for the financing of public education, this committee would do well to start with a full investigation of property tax administration, enforcement, and validity throughout these United States, where the issue is rapidly becoming one of deep and increasingly organized small-taxpayer concern.

We have, Mr. Chairman, a monthly property tax newsletter which we prepare, some copies of which we'd like to submit for the record.

Senator Mondale. We will put that in the record.*

Mr. Nader. And other information that we have compiled can be made available to the committee. Thank you.

Senator Mondale. Thank you very much, Mr. Nader, for a most useful statement. This committee, as you have observed, is charged with trying to take a quick look at the inequality of educational opportunity in this country.

Of course, one of the key issues is the equality of financial resources and support for our school systems. Since, as you have observed, our school systems still depend principally upon the local real estate tax values and administration, we see a very consistent pattern in this country of wealth being available to the more privileged students, and low valuations and, consequently, low financial support for schools in the poorest areas.

Then, you add by your testimony today very clear evidence that in addition to generally low valuations there is a practice of preferring powerful commercial interests which are able to escape their full share of the taxload or, in some cases, avoid it entirely.

Now, I think that picture is almost beyond dispute. At least, I don't find many people arguing that that is the result of the present real estate tax support structure system in this country. The result is that the poorest children often have per capita expenditures one-tenth, maybe one-fifteenth, as much a year as more privileged children do, and, while we can't be sure that more money helps education, most educators believe you have got to have enough money to do at least a minimum job in many of these areas now.

Now, with that kind of almost undisputed picture, along comes the *Serrano* case which says that the difference in financial input in the California school systems was such that it violated the Constitution—every American child is entitled to what they call fiscal equity. He is entitled to enough expenditure on his education that he gets an equal chance. That's a new constitutional principle.

We don't know where this is going to take us, but one of the key questions, it seems to me, that rises from the *Serrano* case is what do we substitute in place of the present real estate tax system? Should States move to income taxes; should they move to State sales taxes;

* See Part 16D, Appendix 6.

should they move to a statewide levy of real estate taxes; should they do a combination of all of them or something else; because, as you recount in your testimony here, I wonder whether the property tax is a curable kind of tax?

Uniform Enforcement

Mr. Nader. Well, certainly the property tax has some regressive characteristics to it as a tax, but I think the best way to confront the validity of the tax throughout the country is to enforce the present property tax uniformly throughout the States.

State constitutions almost invariably have a provision which requires a uniform criteria for the assessment function. There is an equality, therefore, built into the State constitutions long before anybody thought to bring a case such as the California financing, school financing, case.

There are so many proposals as to what is the best kind of tax that you have a problem similar to that of national health insurance, that the very multiplicity of proposals often tend to obscure the real issues and make them as nonexplicit as they can be.

I don't have any specific alternatives to propose except by way of recommending that, if the property tax issue is confronted on an enforcement and administration basis throughout the country, there will be a much stronger force to question its validity and where it should be changed.

In the second place, as far as a short-term change—and we always have to look at the short term as well as the long term—the collection of many, many millions of dollars throughout the country would help to alleviate some of the pressure that now occurs, particularly as they relate to school financing.

Senator Mondale. What role could the Federal Government play in all of this?

Federal Role

Mr. Nader. One clear role comes under the revenue-sharing proposals. Any congressional deliberation of revenue-sharing, it seems to me, will have to look at the question of local tax effort. If the Federal Government is going to route revenues back to the States and, therefore, also back to the local government units, the question should be asked, are these local units getting as much tax out of their regions as their laws say they should be?

Now, Senator Muskie has shown some interest in his intergovernmental committee, the Committee on Intergovernmental Relations, at looking into the property tax from that point of view.

Senator Mondale. In other words, might revenue-sharing be conditioned with the requirement that there must first be an honest, legal assessment system?

Mr. Nader. Qualified assessors, qualified administration, qualified enforcement.

Senator Javits. Will the Chair yield?

Senator Mondale. Certainly.

Senator Javits. I am a member of the Government Operations Committee. Senator Muskie's Subcommittee on Intergovernmental Relations has proposed investigating this very proposition. I agree with Mr. Nader that there are maintenance-of-effort provisions in

many Federal-State aid programs, and as far as I know, these have never cranked in, though I don't see any reason why they shouldn't, this question of nondiscrimination in assessment.

Nondiscrimination of Assessments

I think that is really his point—nondiscrimination in assessment, because as he points out, even in the face of underassessment or exclusion of property, tax districts must maintain certain minimal levels of expenditure. It comes out of somebody—in this case it comes out of the small property owners—whoever they may be.

What I'd like to ask Mr. Nader is this: Have you given or has any of your teams given any thought to the extension of the *Serrano* case, which would come from a test by a taxpayer in a given area challenging the discrimination against him on the ground that other properties are either underassessed or not assessed at all?

Now, in contesting an assessment, I know from New York City's experience you can compare other properties but you can't use the fact that another property is underassessed as a basis for contesting your own assessment, though you can make a comparison of that use, and I just wondered if your fellows haven't looked into it. It might be worth looking into.

Mr. Nader. Yes, there are a number of cases now pending in various courts around the country on these issues. In fact, the *Serrano* case has similar parallels in a number of other States at the present time. We have not engaged in any such litigation, however.

Present Corporate View

Senator Javits. The other thing, Mr. Chairman, that occurred to me is this: Certainly, the facts stated, which I understand have been stated before, are very alarming, but I'm sure Mr. Nader would agree with me, just as we don't want to discriminate against the poor, we also don't want to discriminate against the rich. Therefore, don't you think, Mr. Chairman, that it would be desirable to face all of the interests charged with the charges and let's see what they have to say about it? If they haven't much to say about it or they have a weak case, it seems to me that it makes it less possible to dismiss what Mr. Nader is testifying to because some will say he's an overcallous consumer's advocate. I think if we do it as a committee, and if there is a case to be strengthened, we are likely to strengthen it rather than weaken it. I make that suggestion to the chair.

Mr. Nader. I think that's an excellent suggestion, Senator.

Senator Mondale. Could you be here that day?

Mr. Nader. Oh, yes; but I think you will have a great deal of difficulty before you get United States Steel to come before this committee.

Senator Javits. All right. This seems to me that an active dialog between competing interests will lend itself to a better presentation of the issues.

Mr. Nader. Yes, I have long been advocating the presence of corporate executives before congressional committees.

Senator Javits. Well, just one other point, and that is that one thing I know from my service to my own State. I refer to the sentence

in which you state that the States offer taxes that will hold old industry and lure new industry in, is very true, and often with the great support of the State—that is, the people of the State—even though they are burdened by resulting tax inequalities. It is a political fact of life that we cannot overlook because, especially in a State like mine, government literally sends salesmen in to convince prospective employers they are going to get a better tax break and therefore, these employers should leave New York and go wherever it will be and with the approval of the State legislature and probably the people as well; that's an added complication.

Senator MONDALE. That, of course, raises the question of the Federal role. One aspect could be conditioning aid on an honest assessment system. The other could be a much broader Federal support: First of all, to try to deal with an—what I would call interstate tax bribery—you know, industry is going to leave, they won't come in or won't expand. Every State faces that and has for years, and the same people complaining about the growing strength of the Federal Government are usually the same people that resist an honest tax at the local level. If a problem must be met, inevitably it ends up in the Federal Government, because you can't bribe the Federal Government in the same way.

The second thing we haven't talked about is that just as there are differences in school districts and wealth, there are some very profound differences between States and their wealth, and if we really want equality of educational opportunity many of these pathetically poor rural States, many of which are in the South, simply could not produce equality in education even if they taxed everything they had. Would you agree with that observation?

Mr. NADER. Yes. Mr. Rowe would like to reply to that.

FEDERAL INCOME TAX LOOPHOLES

Mr. ROWE. Yes, I'd like to make a comment on the suggestion that the financing of education could be put increasingly on the Federal level. An aspect of the local property tax, which is sometimes overlooked, is that it can, in effect, close up the loopholes in the Federal income tax laws. Consider coal. Coal royalties are accorded both capital gains treatment and depletion allowances. As a result of those two loopholes they are taxed on the Federal level at a very, very minimal level. Thus the local property tax is really the only tax in existence now which at least has the potential for getting at the fantastic mineral wealth. In short, if we are going to move away from a local tax and put more support of education on the Federal level, we will have to give some attention to the Federal tax structure.

Senator MONDALE. I'd like to press just a little harder if I can on the form of the State tax structure that you would prefer in your proposal, because actually, the *Serrano* principle, I think, hurries that question along faster than just the question of dealing with local tax assessment procedure.

If the *Serrano* principle is to stand in California—there is a trial involved—then within the next year or two California must decide how it intends to deliver equality or fiscal equity to these school districts, and it seems to me inevitably it involves a much broader State role, either through a new system of grants, which I assume they

meet with income tax, a statewise property tax levy, and some kind of new sales tax or gross earning tax or some combination of all of them.

Do you have a preference or recommended procedure or approach that you think would provide more tax equity and more decent fiscal equities in the terms of the school support, or are you neutral to that question?

Mr. NADER. Well, you can imagine how historically controversial that question is, going back to the days of Henry George.

Senator MONDALE. Yes.

Mr. NADER. Some of the proposals would advocate abolishing the property tax entirely, replacing it with a progressive State income tax. Without expressing a final judgment, I find it difficult to envision a State government that doesn't have some sort of tax on property, on real and personal property. There is a great need to change the techniques of assessment and make them far more reflective of the real values of the lands and the personal properties, and I think that that should be given first consideration.

Whether or not the property tax base can be held as a revenue source, eliminating some of its more regressive impacts, even under ideal conditions and also eliminating the gross discrimination and inequities and illegalities that prevail, I think, quite clearly there has to be more emphasis on statewise taxes.

Senator MONDALE. John Coons, the chief lawyer in the *Serrano* case, testified before us the other day. He suggested a statewide property tax on commercial industrial mining properties, and it was his feeling that such a statewide system would evitably bring about better tax administration assessment.

Do you think there might be such a tendency and the State might be more capable of resisting some of these local pressures than the local government?

Mr. NADER. Well, I suppose theoretically it's easy to say yes, because it would have more visibility; it would have less of the local political and economic intimidation that company towns and large plantation owners, and orchard owners can impose on the community.

STATES HAVE ENCOURAGED SITUATION

The point in my testimony is that the States have often been the ones that have encouraged the kind of situation that occurs at the local level, but on balance I think that modern assessment practices and superior administration of the property tax law according to common criteria can only be done by the States, and since the real issue today—particularly before this committee—is the discrimination between local taxing districts, only the State, which is the generic general authority for these local governments, can impose that kind of uniformity.

There is another asset as well. I think there are probably three major corruptive factors of local government, sort of like the three P's: Procurement, property tax, and patronage. Anything that can take away from one or more of those three conditions and take it up to a more visible level at the State government or region, I think will help cleanse local politics. The notorious situation in Chicago, Ill., with the property tax underpayments, and hardship exceptions given to the

owners of these brand new skyscrapers because they haven't yet filled them with tenants, and the high correlation between these so-called owners of hardship buildings and their contributions to the local Democratic Party, I think is an illustration of just how that system operates.

Local government procurement also has been a subject of a number of scandals throughout the country, such as in New Jersey, and the patronage goes without saying in some of these cities.

Now, I think that taking away that kind of grease, so to speak, from the local level will help improve politics, and if you help local politics you can't help but have good spinoffs on local education as well.

Senator MONDALE. Thank you very much for a most useful contribution.

Mr. NADER. Thank you.

Mr. ROWE. Thank you.

Senator MONDALE. The committee is in recess, subject to the call of the Chair.

(Whereupon, at 11:10 a.m., the Select Committee was recessed, to reconvene at the call of the Chair.)

INEQUALITY IN SCHOOL FINANCE

TUESDAY, SEPTEMBER 28, 1971

U.S. SENATE
SELECT COMMITTEE ON
EQUAL EDUCATIONAL OPPORTUNITY
Washington, D.C.

The Select Committee met at 10:05 a.m., pursuant to call, in room 1318, of the New Senate Office Building, the Honorable Walter F. Mondale, chairman of the committee, presiding.

Present: Senator Mondale.

Staff members present: William C. Smith, staff director and general counsel; Donn Mitchell, professional staff; and Leonard Strickman, minority counsel.

Senator MONDALE. The committee will come to order.

Professor Coons and Professor Yudof, please come to the witness table. I understand that Mrs. Carey is not here yet, so we will begin with the testimony of Dr. Coons.

We are very pleased to have you with us this morning. The lawsuit that you won in California is very central to the work of our committee and has developed a tremendous amount of national interest, and we are delighted to have those of you who conceived of it and engineered the victory to be with us here.

Professor Coons, if you will begin?

STATEMENT OF JOHN E. COONS, PROFESSOR, SCHOOL OF LAW, UNIVERSITY OF CALIFORNIA

Dr. COONS. Thank you very much, Senator. We greatly appreciate the opportunity to be here.

I might ask you—the indication from the committee was that we would have 15 minutes of original testimony, and I wondered whether it was to include all of the witnesses this morning, or each of us?

Senator MONDALE. That is a rule that no one pays any attention to.

Dr. COONS. So, should I go beyond 7½ minutes, I don't have to worry about my brother Yudof?

Senator MONDALE. No, that is fine. Go ahead.

Dr. COONS. It might be useful to say something about the problem to which the *Serrano* case was addressed.

Senator MONDALE. Incidentally, at this point, I am going to include the decision of the Court in the record so we will have that to refer to.

Dr. COONS. Splendid.

C O P Y

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

L.A. 29820
(Super. Ct. No. 938254)

JOHN SERRANO, JR., et al.,

Plaintiffs and Appellants,

v.

IVY BAKER PRIEST, as Treasurer, etc., et al.,

Defendants and Respondents.

We are called upon to determine whether the California public school financing system, with its substantial dependence on local property taxes and resultant wide disparities in school revenue, violates the equal protection clause of the Fourteenth Amendment. We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing as we must that the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth, we can discern no compelling state purpose necessitating the present method of financing. We have

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SEE DISSENTING OPINION

concluded, therefore, that such a system cannot withstand constitutional challenge and must fall before the equal protection clause.

Plaintiffs, who are Los Angeles County public school children and their parents, brought this class action for declaratory and injunctive relief against certain state and county officials charged with administering the financing of the California public school system. Plaintiff children claim to represent a class consisting of all public school pupils in California, "except children in that school district, the identity of which is presently unknown, which school district affords the greatest educational opportunity of all school districts within California." Plaintiff parents purport to represent a class of all parents who have children in the school system and who pay real property taxes in the county of their residence.

Defendants are the Treasurer, the Superintendent of Public Instruction, and the Controller of the State of California, as well as the Tax Collector and Treasurer, and the Superintendent of Schools of the County of Los Angeles. The county officials are sued both in their local capacities and as representatives of a class composed of the school superindentent,

tax collector and treasurer of each of the other counties in the state.

The complaint sets forth three causes of action. The first cause alleges in substance as follows: Plaintiff children attend public elementary and secondary schools located in specified school districts in Los Angeles County. This public school system is maintained throughout California by a financing plan or scheme which relies heavily on local property taxes and causes substantial disparities among individual school districts in the amount of revenue available per pupil for the districts' educational programs. Consequently, districts with smaller tax bases are not able to spend as much money per child for education as districts with larger assessed valuations.

It is alleged that "As a direct result of the financing scheme . . . substantial disparities in the quality and extent of availability of educational opportunities exist and are perpetuated among the several school districts of the State . . . . [Par.] The educational opportunities made available to children attending public schools in the Districts, including plaintiff children, are substantially inferior to the educational opportunities made available to children

attending public schools in many other districts of the State . . . ." The financing scheme thus fails to meet the requirements of the equal protection clause of the Fourteenth Amendment of the United States Constitution and the California Constitution in several specified respects.[1]

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1. The complaint alleges that the financing scheme:
"A. Makes the quality of education for school age children in California, including Plaintiff Children, a function of the wealth of the children's parents and neighbors, as measured by the tax base of the school district in which said children reside, and
"B. Makes the quality of education for school age children in California, including Plaintiff Children, a function of the geographical accident of the school district in which said children reside, and
"C. Fails to take account of any of the variety of educational needs of the several school districts (and of the children therein) of the State of California, and
"D. Provides students living in some school districts of the State with material advantages over students in other school districts in selecting and pursuing their educational goals, and
"E. Fails to provide children of substantially equal age, aptitude, motivation, and ability with substantially equal educational resources, and
"F. Perpetuates marked differences in the quality of educational services, equipment and other facilities which exist among the public school districts of the State as a result of the inequitable apportionment of State resources in past years.
"G. The use of the 'school district' as a unit for the differential allocation of educational funds bears no reasonable relation to the California legislative purpose of providing equal educational opportunity for all school children within the State.
"H. The part of the State financing scheme which permits each school district to retain and expend within that district all of the property tax collected within that district bears no reasonable relation to any educational objective or need.

4 (footnote continued)

In the second cause of action, plaintiff parents, after incorporating by reference all the allegations of the first cause, allege that as a direct result of the financing scheme they are required to pay a higher tax rate than taxpayers in many other school districts in order to obtain for their children the same or lesser educational opportunities afforded children in those other districts.

In the third cause of action, after incorporating by reference all the allegations of the first two causes, all plaintiffs allege that an actual controversy has arisen and now exists between the parties as to the validity and constitutionality of the financing scheme under the Fourteenth Amendment of the United States Constitution and under the California Constitution.

Plaintiffs pray for: (1) a declaration that the present financing system is unconstitutional; (2) an order directing defendants to reallocate school funds in order to remedy this invalidity; and (3) an adjudication that the trial court retain jurisdiction of the action

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"I. A disproportionate number of school children who are black children, children with Spanish surnames, children belonging to other minority groups reside in school districts in which a relatively inferior educational opportunity is provided."

so that it may restructure the system if defendants and the state Legislature fail to act within a reasonable time.

All defendants filed general demurrers to the foregoing complaint asserting that none of the three claims stated facts sufficient to constitute a cause of action. The trial court sustained the demurrers with leave to amend. Upon plaintiffs' failure to amend, defendants' motion for dismissal was granted. (Code Civ. Proc., § 581, subd. 3.) An order of dismissal was entered (Code Civ. Proc., § 581d), and this appeal followed.

Preliminarily we observe that in our examination of the instant complaint, we are guided by the long-settled rules for determining its sufficiency against a demurrer. We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. (Daar v. Yellow Cab Co. (1967) 67 Cal.2d 695, 713.) We also consider matters which may be judicially noticed. (Id. at p. 716.) Accordingly, from time to time herein we shall refer to relevant information which has been drawn to our attention either by the parties or by our independent research; in each instance we judicially notice this material since it is contained in publications of state officers or agencies. (Board of Education v.

Watson (1966) 63 Cal.2d 829, 836, fn. 3; see Evid. Code, § 452, subd. (c).)

I

We begin our task by examining the California public school financing system which is the focal point of the complaint's allegations. At the threshold we find a fundamental statistic - over 90 percent of our public school funds derive from two basic sources: (a) local district taxes on real property and (b) aid from the State School Fund.[2]

By far the major source of school revenue is the local real property tax. Pursuant to article IX, section 6 of the California Constitution, the Legislature has authorized the governing body of each county, and city and county, to levy taxes on the real property within a school district at a rate necessary to meet the district's annual education budget. (Ed. Code, § 20701, et seq.)[3] The amount of revenue which a

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2. California educational revenues for the fiscal year 1968-1969 came from the following sources: local property taxes, 55.7 percent; state aid, 35.5 percent; federal funds, 6.1 percent; miscellaneous sources, 2.7 percent. (Legislative Analyst, Public School Finance, Part I, Expenditures for Education (1970) p. 5. Hereafter referred to as Legislative Analyst.)

3. Hereafter, unless otherwise indicated, all section references are to the Education Code.

district can raise in this manner thus depends largely on its tax base - i.e., the assessed valuation of real property within its borders. Tax bases vary widely throughout the state; in 1969-1970, for example, the assessed valuation per unit of average daily attendance of elementary school children[4] ranged from a low of $103 to a peak of $952,156 -- a ratio of nearly 1 to 10,000. (Legislative Analyst, Public School Finance, Part V, Current Issues in Educational Finance (1971) p. 7.)[5]

The other factor determining local school revenue is the rate of taxation within the district. Although the Legislature has placed ceilings on permissible district tax rates (§ 20751, et seq.), these

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4. Most school aid determinations are based not on total enrollment, but on "average daily attendance" (ADA), a figure computed by adding together the number of students actually present on each school day and dividing that total by the number of days school was taught. (§§ 11252, 11301, 11401.) In practice, ADA approximates 98 percent of total enrollment. (Legislative Analyst, Public School Finance, Part IV, Glossary of Terms Most Often Used in School Finance (1971) p. 2.) When we refer herein to figures on a "per pupil" or "per child" basis, we mean per unit of ADA.

5. Over the period November 1970 to January 1971 the legislative analyst provided to the Legislature a series of five reports which "deal with the current system of public school finance from kindergarten through the community college and are designed to provide a working knowledge of the system of school finance." (Legislative Analyst, Part I, supra, p. 1.) The series is as follows: Part I, Expenditures for Education; Part II, The State

8 (footnote continued)

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statutory maxima may be surpassed in a "tax override" election if a majority of the district's voters approve a higher rate. (§ 20803 et seq.) Nearly all districts have voted to override the statutory limits. Thus the locally raised funds which constitute the largest portion of school revenue are primarily a function of the value of the realty within a particular school district, coupled with the willingness of the district's residents to tax themselves for education.

Most of the remaining school revenue comes from the State School Fund pursuant to the "foundation program," through which the state undertakes to supplement local taxes in order to provide a "minimum amount of guaranteed support to all districts . . . ." (§ 17300.) With certain minor exceptions,[6] the foundation program ensures that each school district will receive annually,

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School Fund: Its Derivation and Distribution; Part III, The Foundation Program; Part IV, Glossary of Terms Most Often Used in School Finance; Part V, Current Issues in Educational Finance.

6. Districts which maintain "unnecessary small schools" receive $10 per pupil less in foundation funds. (§ 17655.5 et seq.)
Certain types of school districts are eligible for "bonus" foundation funds. Elementary districts receive an additional $30 for each student in grades 1 through 3; this sum is intended to reduce class size in those grades. (§ 17674.) Unified school districts get an extra $20 per child in foundation support. (§§ 17671 - 17673.)

from state or local funds, $355 for each elementary school pupil (§§ 17656, 17660) and $488 for each high school student. (§ 17665.)

The state contribution is supplied in two principal forms. "Basic state aid" consists of a flat grant to each district of $125 per pupil per year, regardless of the relative wealth of the district. (Cal Const., art. IX, § 6, par. 4; Ed. Code, §§ 17751, 17801.) "Equalization aid" is distributed in inverse proportion to the wealth of the district.

To compute the amount of equalization aid to which a district is entitled, the State Superintendent of Public Instruction first determines how much local property tax revenue would be generated if the district were to levy a hypothetical tax at a rate of $1 on each $100 of assessed valuation in elementary school districts and $.80 per $100 in high school districts.[7] (§ 17702.) To that figure, he adds the $125 per pupil basic aid grant. If the sum of those two amounts is less than the foundation program minimum for that district, the state contributes

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7. This is simply a "computational" tax rate used to measure the relative wealth of the district for equalization purposes. It bears no relation to the tax rate actually set by the district in levying local real property taxes.

the difference. (§§ 17901, 17902.) Thus, equalization funds guarantee to the poorer districts a basic minimum revenue, while wealthier districts are ineligible for such assistance.

An additional state program of "supplemental aid" is available to subsidize particularly poor school districts which are willing to make an extra local tax effort. An elementary district with an assessed valuation of $12,500 or less per pupil may obtain up to $125 more for each child if it sets its local tax rate above a certain statutory level. A high school district whose assessed valuation does not exceed $24,500 per pupil is eligible for a supplement of up to $72 per child if its local tax is sufficiently high. (§§ 17920 - 17926.)[8]

Although equalization aid and supplemental aid temper the disparities which result from the vast variations in real property assessed valuation, wide

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8. Some further equalizing effect occurs through a special areawide foundation program in districts included in reorganization plans which were disapproved at an election. (§ 17680 et seq.) Under this program, the assessed valuation of all the individual districts in an area is pooled, and an actual tax is levied at a rate of $1 per $100 for elementary districts and $.80 for high school districts. The resulting revenue is distributed among the individual districts according to the ratio of each district's foundation level to the areawide total. Thus, poor districts effectively share in the higher tax bases of their wealthier neighbors. However, any district is still free to tax itself at a rate higher than $1 or $.80; such additional revenue is retained entirely by the taxing district.

differentials remain in the revenue available to individual districts and, consequently, in the level of educational expenditures.[9] For example, in Los Angeles County, where plaintiff children attend school, the Baldwin Park Unified School District expended only $577.49 to educate each of its pupils in 1968-1969; during the same year the Pasadena Unified School District spent $840.19 on every student; and the Beverly Hills Unified School District paid out $1,231.72 per child. (Cal. Dept. of Ed., Cal. Public Schools, Selected Statistics 1968-1969

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9. Statistics compiled by the legislative analyst show the following range of assessed valuations per pupil for the 1969-1970 school year:

	Elementary	High School
Low	$103	11,959
Median	19,600	41,300
High	952,156	349,093

(Legislative Analyst, Part V, supra, p. 7.)

Per pupil expenditures during that year also varied widely:

	Elementary	High School	Unified
Low	$407	$722	$612
Median	672	898	766
High	2,586	1,767	2,414

(Id. at p. 8.)

Similar spending disparities have been noted throughout the country, particularly when suburban communities and urban ghettos are compared. (See, e.g., Report of the National Advisory Commission on Civil Disorders (Bantam ed. 1968) pp. 434-436; U.S. Commission on Civil Rights, Racial Isolation in the Public Schools (1967) pp. 25-31; Conant, Slums and Suburbs (1961) pp. 2-3; Levi, The University, The Professions, and the Law (1968) 56 Cal.L.Rev. 251, 258-259.)

(1970) Table IV-11, pp. 90-91.) The source of these disparities is unmistakable: in Baldwin Park the assessed valuation per child totaled only $3,706; in Pasadena, assessed valuation was $13,706; while in Beverly Hills, the corresponding figure was $50,885 -- a ratio of 1 to 4 to 13. (Id.) Thus, the state grants are inadequate to offset the inequalities inherent in a financing system based on widely varying local tax bases.

Furthermore, basic aid, which constitutes about half of the state educational funds (Legislative Analyst, Public School Finance, Part II, The State School Fund: Its Derivation, Distribution and Apportionment (1970) p. 9), actually widens the gap between rich and poor districts. (See Cal. Senate Fact Finding Committee on Revenue and Taxation, State and Local Fiscal Relationships in Public Education in California (1965) p. 19.) Such aid is distributed on a uniform per pupil basis to all districts, irrespective of a district's wealth. Beverly Hills, as well as Baldwin Park, receives $125 from the state for each of its students.

For Baldwin Park the basic grant is essentially meaningless. Under the foundation program the state must make up the difference between $355 per elementary child and $47.91, the amount of revenue per child which Baldwin Park could raise by levying a tax of $1 per $100 of assessed

valuation. Although under present law, that difference is composed partly of basic aid and partly of equalization aid, if the basic aid grant did not exist, the district would still receive the same amount of state aid -- all in equalizing funds.

For Beverly Hills, however, the $125 flat grant has real financial significance. Since a tax rate of $1 per $100 there would produce $870 per elementary student, Beverly Hills is far too rich to qualify for equalizing aid. Nevertheless, it still receives $125 per child from the state, thus enlarging the economic chasm between it and Baldwin Park. (See Coons, Clune & Sugarman, Educational Opportunity: A Workable Constitutional Test for State Financial Structures (1969) 57 Cal.L.Rev. 305, 315.)

II

Having outlined the basic framework of California school financing, we take up plaintiffs' legal claims. Preliminarily, we reject their contention that the school financing system violates article IX, section 5 of the California Constitution, which states, in pertinent part: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year . . . ."

(Italics added.)[10] Plaintiffs' argument is that the present financing method produces separate and distinct systems, each offering an educational program which varies with the relative wealth of the district's residents.

We have held that the word "system," as used in article IX, section 5, implies a "unity of purpose as well as an entirety of operation, and the direction to the legislature to provide 'a' system of common schools means one system which shall be applicable to all the common schools within the state." (Kennedy v. Miller (1893) 97 Cal. 429, 432.) However, we have never interpreted the constitutional provision to require equal school spending; we have ruled only that the educational system must be uniform in terms of the prescribed course of study and educational progression from grade to grade. (Piper v. Big Pine School Dist. (1924) 193 Cal. 664, 669, 673.)

We think it would be erroneous to hold otherwise. While article IX, section 5 makes no reference

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10. Plaintiffs' complaint does not specifically refer to article IX, section 5. Rather it alleges that the financing system "fails to meet minimum requirements of the . . . fundamental law and Constitution of the State of California," citing several other provisions of the state Constitution. Plaintiffs' first specific reference to article IX, section 5 is made in their brief on appeal. We treat plaintiffs' claim under this section as though it had been explicitly raised in their complaint.

to school financing, section 6 of that same article specifically authorizes the very element of the fiscal system of which plaintiffs complain. Section 6 states, in part: "The Legislature shall provide for the levying annually by the governing board of each county, and city and county, of such school district taxes, at rates . . . as will produce in each fiscal year such revenue for each school district as the governing board thereof shall determine is required . . . ."

Elementary principles of construction dictate that where constitutional provisions can reasonably be construed to avoid a conflict, such an interpretation should be adopted. (People v. Western Airlines, Inc. (1954) 42 Cal.2d 621, 637, app. dism. (1954) 348 U.S. 859.) This maxim suggests that section 5 should not be construed to apply to school financing; otherwise it would clash with section 6. If the two provisions were found irreconcilable, section 6 would prevail because it is more specific and was adopted more recently. (Id.; County of Placer v. Aetna Cas. etc. Co. (1958) 50 Cal.2d 182, 189.) Consequently, we must reject plaintiffs' argument that the provision in section 5 for a "system of common schools" requires uniform educational expenditures.

III

Having disposed of these preliminary matters, we take up the chief contention underlying plaintiffs' complaint, namely that the California public school financing scheme violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.[11]

As recent decisions of this court have pointed out, the United States Supreme Court has employed a two-level test for measuring legislative classifications against the equal protection clause. "In the area of economic regulation, the high court has exercised restraint, investing legislation with a presumption of constitutionality and requiring merely that distinctions drawn by a challenged statute bear some rational

11. The complaint also alleges that the financing system violates article I, sections 11 and 21, of the California Constitution. Section 11 provides: "All laws of a general nature shall have a uniform operation." Section 21 states: "No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens." We have construed these provisions as "substantially the equivalent" of the equal protection clause of the Fourteenth Amendment to the federal Constitution. (Dept. of Mental Hygiene v. Kirchner (1965) 62 Cal.2d 586, 588.) Consequently, our analysis of plaintiffs' federal equal protection contention is also applicable to their claim under these state constitutional provisions.

relationship to a conceivable legitimate state purpose. [Citations.]

"On the other hand, in cases involving 'suspect classifications' or touching on 'fundamental interests,' [fns. omitted] the court has adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny. [Citations.] Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose." (Westbrook v. Mihaly (1970) 2 Cal.3d 765, 784-785, vacated on other grounds (1971) ___ U.S. ___; In re Antazo (1970) 3 Cal.3d 100, 110-111; see Purdy & Fitzpatrick v. State of California (1969) 71 Cal.2d 566, 578-579.)

A

Wealth as a Suspect Classification

In recent years, the United States Supreme Court has demonstrated a marked antipathy toward legislative classifications which discriminate on the basis of certain "suspect" personal characteristics. One factor which has repeatedly come under the close scrutiny of the high court is wealth. "Lines drawn on the basis

of wealth or property, like those of race [citation], are traditionally disfavored." (Harper v. Virginia Bd. of Elections (1966) 383 U.S. 663, 668.) Invalidating the Virginia poll tax in Harper, the court stated: "To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor." (Id.) "[A] careful examination on our part is especially warranted where lines are drawn on the basis of wealth . . . [a] factor which would independently render a classification highly suspect and thereby demand a more exacting judicial scrutiny. [Citations.]" (McDonald v. Board of Elections (1969) 394 U.S. 802, 807.) (See also Tate v. Short (1971) 39 U.S. L.Week 4301; Williams v. Illinois (1970) 399 U.S. 235; Roberts v. La Vallee (1967) 389 U.S. 40; Anders v. California (1967) 386 U.S. 738; Douglas v. California (1963) 372 U.S. 353; Smith v. Bennett (1961) 365 U.S. 708; Burns v. Ohio (1959) 360 U.S. 252; Griffin v. Illinois (1956) 351 U.S. 12; In re Antazo, supra, 3 Cal.3d 100; see generally Michelman, The Supreme Court, 1968 Term, Foreword: On Protecting the Poor Through the Fourteenth Amendment (1969) 83 Harv.L.Rev. 7, 19-33.)

Plaintiffs contend that the school financing

system classifies on the basis of wealth. We find this proposition irrefutable. As we have already discussed, over half of all educational revenue is raised locally by levying taxes on real property in the individual school districts. Above the foundation program minimum ($355 per elementary student and $488 per high school student), the wealth of a school district, as measured by its assessed valuation, is the major determinant of educational expenditures. Although the amount of money raised locally is also a function of the rate at which the residents of a district are willing to tax themselves, as a practical matter districts with small tax bases simply cannot levy taxes at a rate sufficient to produce the revenue that more affluent districts reap with minimal tax efforts. (See fn. 15, infra, and accompanying text.) For example, Baldwin Park citizens, who paid a school tax of $5.48 per $100 of assessed valuation in 1968-1969, were able to spend less than half as much on education as Beverly Hills residents, who were taxed only $2.38 per $100. (Cal. Dept. of Ed., op. cit. supra, Table III-16, p. 43.)

Defendants vigorously dispute the proposition that the financing scheme discriminates on the basis of wealth. Their first argument is essentially this: through

basic aid, the state distributes school funds equally to all pupils; through equalization aid, it distributes funds in a manner beneficial to the poor districts. However, state funds constitute only one part of the entire school fiscal system.[12] The foundation program partially alleviates the great disparities in local sources of revenue, but the system as a whole generates school revenue in proportion to the wealth of the individual district.[13]

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12. The other major portion is, of course, locally raised revenue; it is clear that such revenue is a part of the overall educational financing system. As we pointed out, supra, article IX, section 6 of the state Constitution specifically authorizes local districts to levy school taxes. Section 20701 et seq. of the Education Code details the mechanics of this process.

13. Defendants ask us to follow Briggs v. Kerrigan (D. Mass. 1969) 307 F.Supp. 295, affd. (1st Cir. 1970) 431 F.2d 967, which held that the City of Boston did not violate the equal protection clause in failing to provide federally subsidized lunches at all of its schools. The court found that such lunches were offered only at schools which had kitchen and cooking facilities. As a result, in some cases the inexpensive meals were available to well-to-do children, but not to needy ones.

We do not find this decision relevant to the present action. Here, plaintiffs specifically allege that the allocation of school funds systematically provides greater educational opportunities to affluent children than are afforded to the poor. By contrast, in Briggs the court found no wealth-oriented discrimination: "There is no

Defendants also argue that neither assessed valuation per pupil nor expenditure per pupil is a reliable index of the wealth of a district or of its residents. The former figure is untrustworthy, they assert, because a district with a low total assessed valuation but a miniscule number of students will have a high per pupil tax base and thus appear "wealthy." Defendants imply that the proper index of a district's wealth is the total assessed valuation of its property. We think defendants' contention misses the point. The only meaningful measure of a district's wealth in the present context is not the absolute value of its property, but the ratio of its resources to pupils, because it is the latter figure which determines how much the district can devote to educating each of its students. [14]

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pattern such that schools with lunch programs predominate in areas of relative wealth and schools without the program in areas of economic deprivation." (Id. at p. 302.)

Furthermore, the nature of the right involved in the two cases is very different. The instant action concerns the right to an education, which we have determined to be fundamental. (See infra.) Availability of an inexpensive school lunch can hardly be considered of such constitutional significance.

14. Gorman Elementary District in Los Angeles County, for example, has a total assessed valuation of $6,063,965, but

22 (footnote continued)

But, say defendants, the expenditure per child does not accurately reflect a district's wealth because that expenditure is partly determined by the district's tax rate. Thus, a district with a high total assessed valuation might levy a low school tax, and end up spending the same amount per pupil as a poorer district whose residents opt to pay higher taxes. This argument is also meritless. Obviously, the richer district is favored when it can provide the same educational quality for its children with less tax effort. Furthermore, as a statistical matter,

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only 41 students, yielding a per pupil tax base of $147,902. We find it significant that Gorman spent $1,378 per student on education in 1968-1969, even more than Beverly Hills. (Cal. Dept. of Ed., op. cit. supra, table IV-11, p. 90.)

We realize, of course, that a portion of the high per-pupil expenditure in a district like Gorman may be attributable to certain costs, like a principal's salary, which do not vary with the size of the school. On such expenses, small schools cannot achieve the economies of scale available to a larger district. To this extent, the high per-pupil spending in a small district may be a paper statistic, which is unrepresentative of significant differences in educational opportunities. On the other hand, certain economic "inefficiencies," such as a low pupil-teacher ratio, may have a positive educational impact. The extent to which high spending in such districts represents actual educational advantages is, of course, a matter of proof. (See fn. 16, infra.) (See generally Hobson v. Hansen (D.D.C. 1967) 269 F.Supp. 401, 437, affd. sub. nom. Smuck v. Hobson (D.C.Cir. 1969) 408 F.2d 175.)

the poorer districts are financially unable to raise their taxes high enough to match the educational offerings of wealthier districts. (Legislative Analyst, Part V, supra, pp. 8-9.) Thus, affluent districts can have their cake and eat it too: they can provide a high quality education for their children while paying lower taxes.[15]

15. "In some cases districts with low expenditure levels have correspondingly low tax rates. In many more cases, however, quite the opposite is true; districts with unusually low expenditures have unusually high tax rates owing to their limited tax base." (Legislative Analyst, Part V, supra, p. 8.) The following table demonstrates this relationship:

COMPARISON OF SELECTED TAX RATES AND EXPENDITURE LEVELS IN SELECTED COUNTIES 1968-1969

County	ADA	Assessed Value per ADA	Tax Rate	Expenditure per ADA
Alameda				
Emery Unified	586	$100,187	$2.57	$2,223
Newark Unified	8,638	6,048	5.65	616
Fresno				
Colinga Unified	2,640	$ 33,244	$2.17	$ 963
Clovis Unified	8,144	6,480	4.28	565
Kern				
Rio Bravo Elementary	121	$136,271	$1.05	$1,545
Lamont Elementary	1,847	5,971	3.06	533
Los Angeles				
Beverly Hills Unified	5,542	$ 50,885	$2.38	$1,232
Baldwin Park Unified	13,108	3,706	5.48	577

(Id. at p. 9.)

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Poor districts, by contrast, have no cake at all.

Finally, defendants suggest that the wealth of a school district does not necessarily reflect the wealth of the families who live there. The simple answer to this argument is that plaintiffs have alleged that there is a correlation between a district's per pupil assessed valuation and the wealth of its residents and we treat these material facts as admitted by the demurrers.

This fact has received comment in reports by several California governmental units. "[S]ome school districts are able to provide a high-expenditure school program at rates of tax which are relatively low, while other districts must tax themselves heavily to finance a low-expenditure program. . . . [Par.] One significant criterion of a public activity is that it seeks to provide equal treatment of equals. The present system of public education . . . in California fails to meet this criterion, both with respect to provision of services and with respect to the geographic distribution of the tax burden." (Cal. Senate Fact Finding Committee on Revenue and Taxation, op. cit. supra, p. 20.)

"California's present system of school support is based largely on a sharing between the state and school districts of the expenses of education. In this system of sharing, the school district has but one source of revenue - the property tax. Therefore, its ability to share depends upon its assessed valuation per pupil and its tax effort. The variations existing in local ability (assessed valuation per pupil) and tax effort (tax rate) present problems which deny equal educational opportunity and local tax equity." (Cal. State Dept. of Ed., Recommendations on Public School Support (1967) p. 69.) (Quoted in Horowitz & Neitring, Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place Within a State (1968) 15 U.C.L.A. L.Rev. 787, 806.)

More basically, however, we reject defendants' underlying thesis that classification by wealth is constitutional so long as the wealth is that of the district, not the individual. We think that discrimination on the basis of district wealth is equally invalid. The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private commercial and industrial establishments.[16] Surely, this is to rely on the most irrelevant of factors as the basis for educational financing.

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16. Defendants contend that different levels of educational expenditure do not affect the quality of education. However, plaintiffs' complaint specifically alleges the contrary, and for purposes of testing the sufficiency of a complaint against a general demurrer, we must take its allegations to be true.

Although we recognize that there is considerable controversy among educators over the relative impact of educational spending and environmental influences on school achievement (compare Coleman, et al., Equality of Educational Opportunity (U.S. Office of Ed. 1966)

26 (footnote continued)

Defendants, assuming for the sake of argument that the financing system does classify by wealth, nevertheless claim that no constitutional infirmity is involved because the complaint contains no allegation of purposeful or intentional discrimination.

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with Guthrie, Kleindorfer, Levin & Stout, Schools and Inequality (1971); see generally Coons, Clune & Sugarman, supra, 57 Cal.L.Rev. 305, 310-311, fn. 16), we note that the several courts which have considered contentions similar to defendants' have uniformly rejected them.

In McInnis v. Shapiro (N.D. Ill. 1968) 293 F.Supp. 327, affd. mem. sub nom. McInnis v. Ogilvie (1969) 394 U.S. 332, heavily relied on by defendants, a three-judge federal court stated: "Presumably, students receiving a $1,000 education are better educated that [sic] those acquiring a $600 schooling." (Fn. omitted.) (Id. at p. 331.) In Hargrave v. Kirk (M.D. Fla. 1970) 313 F.Supp. 944, vacated on other grounds sub nom. Askew v. Hargrave (1971) 401 U.S. 476, the court declared: "Turning now to the defenses asserted, it may be that in the abstract 'the difference in dollars available does not necessarily produce a difference in the quality of education.' But this abstract statement must give way to proof to the contrary in this case." (Id. at p. 947.)

Spending differentials of up to $130 within a district were characterized as "spectacular" in Hobson v. Hansen, supra, 269 F.Supp. 401. Responding to defendants' claim that the varying expenditures did not reflect actual educational benefits, the court replied: "To a great extent . . . defendants' own evidence verifies that the comparative per pupil expenditures do refer to actual educational advantages in the high-cost schools, especially with respect to the caliber of the teaching staff." (Id. at p. 438.)

(Cf. Gomillion v. Lightfoot (1960) 364 U.S. 339.) Thus, defendants contend, any unequal treatment is only de facto, not de jure. Since the United States Supreme Court has not held de facto school segregation on the basis of race to be unconstitutional, so the argument goes, de facto classifications on the basis of wealth are presumptively valid.

We think that the whole structure of this argument must fall for want of a solid foundation in law and logic. First, none of the wealth classifications previously invalidated by the United States Supreme Court or this court has been the product of purposeful discrimination. Instead, these prior decisions have involved "unintentional" classifications whose impact simply fell more heavily on the poor.

For example, several cases have held that where important rights are at stake, the state has an affirmative obligation to relieve an indigent of the burden of his own poverty by supplying without charge certain goods or services for which others must pay. In Griffin v. Illinois, supra, 351 U.S. 12, the high

court ruled that Illinois was required to provide a poor defendant with a free transcript on appeal.[17] Douglas v. California, supra, 372 U.S. 353 held that an indigent person has a right to court-appointed counsel on appeal.

Other cases dealing with the factor of wealth have held that a state may not impose on an indigent certain payments which, although neutral on their face, may have a discriminatory effect. In Harper v. Virginia Bd. of Elections, supra, 383 U.S. 663, the high court struck down a $1.50 poll tax, not because its purpose was to deter indigents from voting, but because its result might be such. (Id. at p. 666, fn. 3.) We held in In re Antazo, supra, 3 Cal.3d 100 that a poor defendant was denied equal protection of the laws if he was imprisoned simply because he could not afford to pay a fine. (Accord, Tate v. Short, supra, 39 U.S. L.Week

17. Justice Harlan, dissenting in Griffin, declared: "Nor is this a case where the State's own action has prevented a defendant from appealing. [Citations.] All that Illinois has done is to fail to alleviate the consequences of differences in economic circumstances that exist wholly apart from any state action. [Par.] The Court thus holds that, at least in this area of criminal appeals, the Equal Protection Clause imposes on the States an affirmative duty to lift the handicaps flowing from differences in economic circumstances." (351 U.S. at p. 34.)

4301; Williams v. Illinois, supra, 399 U.S. 235;[18] see Boddie v. Connecticut (1971) 39 U.S. L.Week 4294, discussed fn. 21, infra.) In summary, prior decisions have invalidated classifications based on wealth even in the absence of a discriminatory motivation.

We turn now to defendants' related contention that the instant case involves at most de facto discrimination. We disagree. Indeed, we find the case unusual in the extent to which governmental action is the cause of the wealth classifications. The school funding scheme

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18. Numerous cases involving racial classifications have rejected the contention that purposeful discrimination is a prerequisite to establishing a violation of the equal protection clause. In Hobson v. Hansen, supra, 269 F.Supp. 401, Judge Skelly Wright stated: "Orthodox equal protection doctrine can be encapsulated in a single rule: government action which without justification imposes unequal burdens or awards unequal benefits is unconstitutional. The complaint that analytically no violation of equal protection vests unless the inequalities stem from a deliberately discriminatory plan is simply false. Whatever the law was once, it is a testament to our maturing concept of equality that, with the help of Supreme Court decisions in the last decade, we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme. [Par.] Theoretically, therefore, purely irrational inequalities even between two schools in a culturally homogenous, uniformly white suburb would raise a real constitutional question." (Fns. omitted.) (Id. at p. 497.) (See also Hawkins v. Town of Shaw, Mississippi (5th Cir. 1971) 437 F.2d 1286; Norwalk CORE v. Norwalk Redevelopment Agency (2d Cir. 1968) 395 F.2d 920, 931.) No reason appears to impose a more stringent requirement where wealth discrimination is charged.

is mandated in every detail by the California Constitution and statutes. Although private residential and commercial patterns may be partly responsible for the distribution of assessed valuation throughout the state, such patterns are shaped and hardened by zoning ordinances and other governmental land-use controls which promote economic exclusivity. (Cf. San Francisco Unified School Dist. v. Johnson (1971) 3 Cal.3d 937, 956.) Governmental action drew the school district boundary lines, thus determining how much local wealth each district would contain. (Cal. Const., art. IX, § 14; Ed. Code, § 1601 et seq; Worthington S. Dist. v. Eureka S. Dist. (1916) 173 Cal. 154, 156; Hughes v. Ewing (1892) 93 Cal. 414, 417; Mountain View Sch. Dist. v. City Council (1959) 168 Cal.App.2d 89, 97.) Compared with Griffin and Douglas, for example, official activity has played a significant role in establishing the economic classifications challenged in this action.[19]

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19. One commentator has described state involvement in school financing inequalities as follows: "[The states] have determined that there will be public education, collectively financed out of general taxes; they have determined that the collective financing will not rest mainly on a statewide tax base, but will be largely decentralized to districts; they have composed the district boundaries, thereby determining wealth distribution among

31 (footnote continued)

Finally, even assuming arguendo that defendants are correct in their contention that the instant discrimination based on wealth is merely de facto, and not de jure, such discrimination cannot be justified by analogy to de facto racial segregation. Although the United States Supreme Court has not yet ruled on the constitutionality of de facto racial segregation, this court eight years ago held such segregation invalid, and declared that school boards should take affirmative steps to alleviate racial imbalance, however created. (Jackson v. Pasadena City School Dist. (1963) 59 Cal.2d 876, 881; San Francisco Unified School Dist. v. Johnson, supra, 3 Cal.3d 937.) Consequently, any discrimination based on wealth can hardly be vindicated by reference to de facto racial segregation, which we have already condemned. In sum, we are of the view that the

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districts; in so doing, they have not only sorted education-consuming households into groups of widely varying average wealth, but they have sorted non-school-using taxpayers — households and others — quite unequally among districts; and they have made education compulsory." His conclusion is that "[s]tate involvement and responsibility are indisputable." (Michelman, supra, 83 Harv.L.Rev. 7, 50, 48.)

20. We recently pointed out the difficulty of categorizing racial segregation as either de facto or de jure. (San Francisco Unified School Dist. v. Johnson, supra, 3 Cal.3d 937, 956-957.) We think the same reasoning applies to classifications based on wealth. Consequently, we decline to attach an oversimplified label to the complex configuration of public and private decisions which has resulted in the present allocation of educational funds.

school financing system discriminates on the basis of the wealth of a district and its residents.

B

Education as a Fundamental Interest

But plaintiffs' equal protection attack on the fiscal system has an additional dimension. They assert that the system not only draws lines on the basis of wealth but that it "touches upon," indeed has a direct and significant impact upon, a "fundamental interest," namely education. It is urged that these two grounds, particularly in combination, establish a demonstrable denial of equal protection of the laws. To this phase of the argument we now turn our attention.

Until the present time wealth classifications have been invalidated only in conjunction with a limited number of fundamental interests -- rights of defendants in criminal cases (Griffin; Douglas; Williams; Tate; Antazo) and voting rights (Harper; Cipriano v. City Houma (1969) 395 U.S. 701; Kramer v. Union School District (1969) 395 U.S. 621; cf. McDonald v. Board of Elections).[21] Plaintiffs' contention -- that education

21. But in Boddie v. Connecticut, supra, 39 U.S. L.Week 4294, the Supreme Court held that poverty cannot constitutionally bar an individual seeking a divorce from access to the civil courts. Using a due process, rather than an

is a fundamental interest which may not be conditioned on wealth -- is not supported by any direct authority.[22]

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equal protection, rationale, the court ruled that an indigent could not be required to pay court fees and costs for service of process as a precondition to commencing a divorce action.

22. In Shapiro v. Thompson (1969) 394 U.S. 618, in which the Supreme Court invalidated state minimum residence requirements for welfare benefits, the high court indicated, in dictum, that certain wealth discrimination in the area of education would be unconstitutional: "We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools." (Id. at p. 633.) Although the high court referred to actual exclusion from school, rather than discrimination in expenditures for education, we think the constitutional principle is the same. (See fn. 24, and accompanying text.)

A federal Court of Appeals has also held that education is arguably a fundamental interest. In Hargrave v. McKinney (5th Cir. 1969) 413 F.2d 320, the Fifth Circuit ruled that a three-judge district court must be convened to consider the constitutionality of a Florida statute which limited the local property tax rate which a county could levy in raising school revenue. Plaintiffs contended that the statute violated the equal protection clause because it allowed counties with a high per-pupil assessed valuation to raise much more local revenue than counties with smaller tax bases. The court stated: "The equal protection argument advanced by plaintiffs is the crux of the case. Noting that lines drawn on wealth are suspect [fn. omitted] and that we are here dealing with interests which may well be deemed fundamental, [fn. omitted] we cannot say that there is no reasonably arguable theory of equal protection which would support a decision in favor of the plaintiffs. [Citations.]" (Id. at p. 324.)

34 (footnote continued)

We, therefore, begin by examining the indispensable role which education plays in the modern industrial state. This role, we believe, has two significant aspects: first, education is a major determinant of an individual's chances for economic and social success in our competitive society; second, education is a unique influence on a child's development as a citizen and his participation in political and community life. "[T]he pivotal position of education to success in American society and its essential role in opening up to the individual the central experiences of our culture lend it an importance that is undeniable." (Note, Development in the Law -- Equal Protection (1969) 82 Harv.L.Rev. 1065, 1129.) Thus, education is the lifeline of both the individual and society.

The fundamental importance of education has been recognized in other contexts by the United States

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On remand, a three-judge court held the statute unconstitutional because there was no rational basis for the discriminatory effect which it had in poor counties. Having invalidated the statute under the traditional equal protection test, the court declined to consider plaintiffs' contention that education was a fundamental interest, requiring application of the "strict scrutiny" equal protection standard. (Hargrave v. Kirk, supra, 313 F.Supp. 944.) On appeal, the Supreme Court vacated the district court's decision on other grounds, but indicated that on remand the lower court should thoroughly explore the equal protection issue. (Askew v. Hargrave (1971) 401 U.S. 476.)

Supreme Court and by this court. These decisions -- while not legally controlling on the exact issue before us -- are persuasive in their accurate factual description of the significance of learning.[23]

The classic expression of this position came in Brown v. Board of Education (1954) 347 U.S. 483, which invalidated de jure segregation by race in public schools. The high court declared: "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him

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23. Defendants contend that these cases are not of precedential value because they do not consider education in the context of wealth discrimination, but merely in the context of racial segregation or total exclusion from school. We recognize this distinction, but cannot agree with defendants' conclusion. Our quotation of these cases is not intended to suggest that they control the legal result which we reach here, but simply that they eloquently express the crucial importance of education.

to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." (Id. at p. 493.)

The twin themes of the importance of education to the individual and to society have recurred in numerous decisions of this court. Most recently in San Francisco Unified School Dist. v. Johnson, supra, 3 Cal.3d 937, where we considered the validity of an anti-busing statute, we observed, "Unequal education, then, leads to unequal job opportunities, disparate income, and handicapped ability to participate in the social, cultural, and political activity of our society." (Id. at p. 950.) Similarly, in Jackson v. Pasadena City School Dist., supra, 59 Cal.2d 876, which raised a claim that school districts had been gerrymandered to avoid integration, this court said: "In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis." (Id. at p. 880.)

When children living in remote areas brought

an action to compel local school authorities to furnish them bus transportation to class, we stated: "We indulge in no hyperbole to assert that society has a compelling interest in affording children an opportunity to attend school. This was evidenced more than three centuries ago, when Massachusetts provided the first public school system in 1647. [Citation.] And today an education has become the sine qua non of useful existence. . . . In light of the public interest in conserving the resource of young minds, we must unsympathetically examine any action of a public body which has the effect of depriving children of the opportunity to obtain an education." (Fn. omitted.) (Manjares v. Newton (1966) 64 Cal.2d 365, 375-376.)

And long before these last mentioned cases, in Piper v. Big Pine School Dist., supra, 193 Cal. 664, where an Indian girl sought to attend state public schools, we declared: "[T]he common schools are doorways opening into chambers of science, art, and the learned professions, as well as into fields of industrial and commercial activities. Opportunities for securing employment are often more or less dependent upon the rating which a youth, as a pupil of our public institutions, has received in his school work. These are rights and privileges that cannot be denied." (Id. at p. 673; see also Ward v. Floyd (1874)

48 Cal. 36.) Although Manjares and Piper involved actual exclusion from the public schools, surely the right to an education today means more than access to a classroom.[24] (See Horowitz & Neitring, supra, 15 U.C.L.A. L.Rev. 787, 811.)

It is illuminating to compare in importance the right to an education with the rights of defendants in criminal cases and the right to vote -- two "fundamental interests" which the Supreme Court has already protected against discrimination based on wealth. Although an individual's interest in his freedom is unique, we think that from a larger perspective, education may have far greater social significance than a free

24. Cf. Reynolds v. Sims (1964) 377 U.S. 533, 562-563, where the Supreme Court asserted that the right to vote is impaired not only when a qualified individual is barred from voting, but also when the impact of his ballot is diminished by unequal electoral apportionment: "It could hardly be gainsaid that a constitutional claim had been asserted by an allegation that certain otherwise qualified voters had been entirely prohibited from voting for members of their state legislature. And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or ten times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. . . . Of course, the effect of state legislative districting schemes which give the same number of represenatives to unequal numbers of constituents is identical. . . . One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination.' [Citation.]" (Fn. omitted.)

transcript or a court-appointed lawyer. "[E]ducation not only affects directly a vastly greater number of persons than the criminal law, but it affects them in ways which -- to the state -- have an enormous and much more varied significance. Aside from reducing the crime rate (the inverse relation is strong), education also supports each and every other value of a democratic society -- participation, communication, and social mobility, to name but a few." (Fn. omitted.) (Coons, Clune & Sugarman, supra, 57 Cal.L.Rev. 305, 362-363.)

The analogy between education and voting is much more direct: both are crucial to participation in, and the functioning of, a democracy. Voting has been regarded as a fundamental right because it is "preservative of other basic civil and political rights . . . ." (Reynolds v. Sims, supra, 377 U.S. 533, 562; see Yick Wo v. Hopkins (1886) 118 U.S. 356, 370.) The drafters of the California Constitution used this same rationale -- indeed, almost identical language -- in expressing the importance of education. Article IX, section 1 provides: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature

shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." (See also Piper v. Big Pine School Dist., supra, 193 Cal. 664, 668.) At a minimum, education makes more meaningful the casting of a ballot. More significantly, it is likely to provide the understanding of, and the interest in, public issues which are the spur to involvement in other civic and political activities.

The need for an educated populace assumes greater importance as the problems of our diverse society become increasingly complex. The United States Supreme Court has repeatedly recognized the role of public education as a unifying social force and the basic tool for shaping democratic values. The public school has been termed "the most powerful agency for promoting cohesion among a heterogeneous democratic people . . . at once the symbol of our democracy and the most persuasive means for promoting our common destiny." (McCollum v. Board of Education (1948) 333 U.S. 203, 216, 231 (Frankfurter, J., concurring).) In Abington School Dist. v. Schempp (1963) 374 U.S. 203, it was said that "Americans regard the public schools as a most vital civic institution for the preservation of a democratic

system of government." (Id. at p. 230; Brennan, J., concurring.)[25]

We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a "fundamental interest."[26]

First, education is essential in maintaining what several commentators have termed "free enterprise

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25. The sensitive interplay between education and the cherished First Amendment right of free speech has also received recognition by the United States Supreme Court. In Shelton v. Tucker (1960) 364 U.S. 479, the court declared: "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." (Id. at p. 487.) Similarly, the court observed in Keyishian v. Board of Regents (1967) 385 U.S. 589, "The classroom is peculiarly the 'market place of ideas.' The Nation's future depends upon leaders trained through wide exposure to [a] robust exchange of ideas . . . ." (Id. at p. 603.) (See also Tinker v. Des Moines School Dist. (1969) 393 U.S. 503, 512; Epperson v. Arkansas (1968) 393 U.S. 97.)

26. The uniqueness of education was recently stressed by the United States Supreme Court in Palmer v. Thompson (1971) 39 U.S. L.Week 4759, where the court upheld the right of Jackson, Mississippi to close its municipal swimming pools rather than operate them on an integrated basis. Distinguishing an earlier Supreme Court decision which refused to permit the closing of schools to avoid desegregation, the court stated: "Of course that case did not involve swimming pools but rather public schools, an enterprise we have described as 'perhaps the most important function of state and local governments.' Brown v. Board of Education, supra, at 493." (Id. at p. 4760, fn. 6.) This theme was echoed in the concurring opinion of Justice Blackmum, who wrote: "The pools are not part

42 (footnote continued)

democracy" -- that is, preserving an individual's opportunity to compete successfully in the economic marketplace, despite a disadvantaged background. Accordingly, the public schools of this state are the bright hope for entry of the poor and oppressed into the mainstream of American society.[27]

Second, education is universally relevant. "Not every person finds it necessary to call upon the fire department or even the police in an entire lifetime.

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of the city's educational system. They are a general municipal service of the nice-to-have but not essential variety, and they are a service, perhaps a luxury, not enjoyed by many communities." (Id. at p. 4762.)

27. In this context, we find persuasive the following passage from Hobson v. Hansen, supra, 269 F.Supp. 401, which held, inter alia, that higher per-pupil expenditures in predominantly white schools than in black schools in the District of Columbia deprived "the District's Negro and poor public school children of their right to equal educational opportunity with the District's white and more affluent public school children." (Id. at p. 406.)

"If the situation were one involving racial imbalance but in some facility other than the public schools, or unequal educational opportunity but without any Negro or poverty aspects (e.g., unequal schools all within an economically homogeneous white suburb), it might be pardonable to uphold the practice on a minimal showing of rational basis. But the fusion of these two elements in de facto segregation in public schools irresistably calls for additional justification. What supports this call is . . . the degree to which the poor and the Negro must rely on the public schools in rescuing themselves from their depressed cultural and economic condition . . . ." (Id. at pp. 508.) Although we realize that the instant case does not present the racial aspects present in Hobson, we find compelling that decision's assessment of the important social role of the public schools.

Relatively few are on welfare. Every person, however, benefits from education . . . ." (Fn. Omitted.) (Coons, Clune & Sugarman, supra, 57 Cal.L.Rev. at p. 388.)

Third, public education continues over a lengthy period of life -- between 10 and 13 years. Few other government services have such sustained, intensive contact with the recipient.

Fourth, education is unmatched in the extent to which it molds the personality of the youth of society. While police and fire protection, garbage collection and street lights are essentially neutral in their effect on the individual psyche, public education actively attempts to shape a child's personal development in a manner chosen not by the child or his parents but by the state. (Coons, Clune & Sugarman, supra, 57 Cal.L.Rev. at p. 389.) "[T]he influence of the school is not confined to how well it can teach the disadvantaged child; it also has a significant role to play in shaping the student's emotional and psychological make-up." (Hobson v. Hansen, supra, 269 F.Supp. 401, 483.)

Finally, education is so important that the state has made it compulsory -- not only in the requirement of attendance but also by assignment to a particular

district and school. Although a child of wealthy parents has the opportunity to attend a private school, this freedom is seldom available to the indigent. In this context, it has been suggested that "a child of the poor assigned willy-nilly to an inferior state school takes on the complexion of a prisoner, complete with a minimum sentence of 12 years." (Coons, Clune & Sugarman, supra, 57 Cal.L.Rev. at p. 388.)

C

The Financing System is Not Necessary to Accomplish a Compelling State Interest

We now reach the final step in the application of the "strict scrutiny" equal protection standard -- the determination of whether the California school financing system, as presently structured, is necessary to achieve a compelling state interest.

The state interest which defendants advance in support of the current fiscal scheme is California's policy "to strengthen and encourage local responsibility for control of public education." (Ed. Code, § 17300.) We treat separately the two possible aspects of this goal: first, the granting to local districts of effective decision-making power over the administration of their schools; and second, the promotion of local fiscal

control over the amount of money to be spent on education.

> The individual district may well be in the best position to decide whom to hire, how to schedule its educational offerings, and a host of other matters which are either of significant local impact or of such a detailed nature as to require decentralized determination. But even assuming arguendo that local administrative control may be a compelling state interest, the present financial system cannot be considered necessary to further this interest. No matter how the state decides to finance its system of public education, it can still leave this decision-making power in the hands of local districts.

The other asserted policy interest is that of allowing a local district to choose how much it wishes to spend on the education of its children. Defendants argue: "[I]f one district raises a lesser amount per pupil than another district, this is a matter of choice and preference of the individual district, and reflects the individual desire for lower taxes rather than an expanded educational program, or may reflect a greater interest within that district in such other services that are supported by local property taxes as, for example, police and fire protection or hospital services."

We need not decide whether such decentralized financial decision-making is a compelling state interest, since under the present financing system, such fiscal free-will is a cruel illusion for the poor school districts. We cannot agree that Baldwin Park residents care less about education than those in Beverly Hills solely because Baldwin Park spends less than $600 per child while Beverly Hills spends over $1,200. As defendants themselves recognize, perhaps the most accurate reflection of a community's commitment to education is the rate at which its citizens are willing to tax themselves to support their schools. Yet by that standard, Baldwin Park should be deemed far more devoted to learning than Beverly Hills, for Baldwin Park citizens levied a school tax of well over $5 per $100 of assessed valuation, while residents of Beverly Hills paid only slightly more than $2.

In summary, so long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present

financing system actually deprives the less wealthy districts of that option.

It is convenient at this point to dispose of two final arguments advanced by defendants. They assert, first, that territorial uniformity in respect to the present financing system is not constitutionally required; and secondly, that if under an equal protection mandate relative wealth may not determine the quality of public education, the same rule must be applied to all tax-supported public services.

In support of their first argument, defendants cite Salsburg v. Maryland (1954) 346 U.S. 545 and Board of Education v. Watson, supra, 63 Cal.2d 829. We do not find these decisions apposite in the present context, for neither of them involved the basic constitutional interests here at issue.[28] We think that two

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28. Salsburg upheld a Maryland statute which allowed illegally seized evidence to be admitted in gambling prosecutions in one county, while barring use of such evidence elsewhere in the state. But when Salsburg was decided, the Fourth and Fourteenth Amendments had not yet been interpreted to prohibit the admission of unlawfully procured evidence in state trials. (Mapp v. Ohio (1961) 367 U.S. 643.) Consequently, the Supreme Court in Salsburg treated the Maryland statute as simply establishing a rule of evidence, which was purely procedural in nature. (346 U.S. at p. 550; see pp. 554-555 (Douglas, J., dissenting).)

In Watson we rejected a constitutional attack on a statute which required special duties of the tax assessor in counties with a population in excess of

48 (footnote continued)

lines of recent decisions have indicated that where fundamental rights or suspect classifications are at stake, a state's general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause. (See Horowitz & Neitring, supra, 15 U.C.L.A. L.Rev. 787.)

The first group of precedents consists of the school closing cases, in which the Supreme Court has invalidated efforts to shut schools in one part of a state while schools in other areas continued to operate. In Griffin v. School Board (1964) 377 U.S. 218 the court stated: "A state, of course, has a wide discretion in deciding whether laws shall operate statewide or shall operate only in certain counties, the legislature 'having in mind the needs and desires of each.' Salsburg v. Maryland, supra, 346 U.S., at 552. . . . But the record in the present case could not be clearer that Prince Edward's public schools were closed . . . for one reason, and one reason only: to ensure . . . that white and colored children in Prince Edward County

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four million, even though we recognized that only Los Angeles County would be affected by the legislation. In both cases, the courts simply applied the traditional equal protection test and sustained the provision after finding some rational basis for the geographic classification.

would not, under any circumstances, go to the same school. Whatever nonracial grounds might support a State's allowing a county to abandon public schools, the object must be a constitutional one. . . . ." (Id. at p. 231.)

Similarly, Hall v. St. Helena Parish School Board (E.D. La. 1961) 197 F.Supp. 649, affd. mem. (1962) 368 U.S. 515 held that a statute permitting a local district faced with integration to close its schools was constitutionally defective, not merely because of its racial consequences: "More generally, the Act is assailable because its application in one parish, while the state provides public schools elsewhere, would unfairly discriminate against the residents of that parish, irrespective of race. . . . [A]bsent a reasonable basis for so classifying, a state cannot close the public schools in one area while, at the same time, it maintains schools elsewhere with public funds." (Fn. omitted.) (Id. at pp. 651, 656.)

The Hall court specifically distinguished Salsburg stating: "The holding of Salsburg v. State of Maryland permitting the state to treat differently, for different localities, the rule against admissibility of illegally obtained evidence no longer obtains in view of Mapp v. Ohio, 367 U.S. 643 . . . . Accordingly,

reliance on that decision for the proposition that there is no constitutional inhibition to geographic discrimination in the area of civil rights is misplaced. . . . [T]he Court [in Salsburg] emphasized that the matter was purely 'procedural' and 'local.' Here, the substantive classification is discriminatory . . . ." (Id. at pp. 658-659, fn. 29.)

In the second group of cases, dealing with apportionment, the high court has held that accidents of geography and arbitrary boundary lines of local government can afford no ground for discrimination among a state's citizens. (Kurland, Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined (1968) 35 U.Chi.L.Rev. 583, 585; see also Wise, Rich Schools, Poor Schools: The Promise of Equal Educational Opportunity (1969) pp. 66-92.) Specifically rejecting attempts to justify unequal districting on the basis of various geographic factors, the court declared: "Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race [citation] or economic status, Griffin v. Illinois, 351 U.S. 12, Douglas v. California, 372 U.S. 353. . . . The fact that an individual lives here or there is not a legitimate reason for overweighting

or diluting the efficacy of his vote." (Reynolds v. Sims, supra, 377 U.S. 533, 566, 567.) If a voter's address may not determine the weight to which his ballot is entitled, surely it should not determine the quality of his child's education.[29]

Defendants' second argument boils down to this: if the equal protection clause commands that the relative wealth of school districts may not determine the quality of public education, it must be deemed to direct the same command to all governmental entities in respect to all tax-supported public services;[30] and such a principle would spell the

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29. Defendants also claim that permitting school districts to retain their locally raised property tax revenue does not violate equal protection because "[t]he power of a legislature in respect to the allocation and distribution of public funds is not limited by any requirement of uniformity or of equal protection of the laws." As an abstract proposition of law, this statement is clearly overbroad. For example, a state Legislature cannot make tuition grants from state funds to segregated private schools in order to avoid integration. (Brown v. South Carolina State Board of Education (D.S.C. 1968) 296 F.Supp. 199, affd. mem. (1968) 393 U.S. 222; Poindexter v. Louisiana Financial Assistance Commission (E.D. La. 1967) 275 F.Supp. 833, affd. mem. (1968) 389 U.S. 571.) The cases cited by defendants are inapplicable in the present context. Neither Hess v. Mullaney (9th Cir. 1954) 213 F.2d 635, cert. den. sub nom. Hess v. Dewey (1954) 348 U.S. 836, nor Gen. Amer. Tank Car Corp. v. Day (1926) 270 U.S. 367 involved a claim to a fundamental constitutional interest, such as education. (See Coons, Clune & Sugarman, supra, 57 Cal.L.Rev. at p. 371, fn. 184.)

30. In support of this contention, defendants cite the following quotation from MacMillan Co. v. Clarke (1920)

52 (footnote continued)

destruction of local government. We unhesitatingly reject this argument. We cannot share defendants' unreasoned apprehensions of such dire consequences from our holding today. Although we intimate no views on other governmental services,[31] we are satisfied that, as we have explained, its uniqueness among public activities clearly demonstrates that education must respond to the command of the equal protection clause.

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184 Cal. 491, 500, in which we upheld the constitutionality of a statute providing free textbooks to high school pupils: "[T]he free school system . . . is not primarily a service to the individual pupils, but to the community, just as fire and police protection, public libraries, hospitals, playgrounds, and the numerous other public service utilities which are provided by taxation, and minister to individual needs, are for the benefit of the general public." Whatever the case as to the other services, we think that in this era of high geographic mobility, the "general public" benefited by education is not merely the particular community where the schools are located, but the entire state.

31. We note, however, that the Court of Appeals for the Fifth Circuit has recently held that the equal protection clause forbids a town to discriminate racially in the provision of municipal services. In Hawkins v. Town of Shaw, Mississippi, supra, 437 F.2d 1286, the court held that the town of Shaw, Mississippi had an affirmative duty to equalize such services as street paving and lighting, sanitary sewers, surface water drainage, water mains and fire hydrants. The decision applied the "strict scrutiny" equal protection standard and reversed the decision of the district court which, relying on the traditional test, had found no constitutional infirmity.

Although racial discrimination was the basis of the decision, the court intimated that wealth discrimination in the provision of city services might also be invalid: "Appellants also alleged the discriminatory provision of municipal services based on wealth. This claim was dropped

53 (footnote continued)

We, therefore, arrive at these conclusions. The California public school financing system, as presented to us by plaintiffs' complaint supplemented by matters judicially noticed, since it deals intimately with education, obviously touches upon a fundamental interest. For the reasons we have explained in detail, this system conditions the full entitlement to such interest on wealth, classifies its recipients on the basis of their collective affluence and makes the quality of a child's education depend upon the resources of his school district and ultimately upon the pocket-book of his parents. We find that such financing system as presently constituted is not necessary to the attainment of any compelling state interest. Since it does not withstand the requisite "strict scrutiny," it denies to the plaintiffs and others similarly situated the equal protection of the laws.[32] If the allegations of the

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on appeal. It is interesting to note, however, that the Supreme Court has stated that wealth as well as race renders a classification highly suspect and thus demanding of a more exacting judicial scrutiny. [Citation.]" (Id. at p. 1287, fn. 1.)

32. The United States Commission on Civil Rights has stated that "[i]t may well be that the substantial fiscal and tangible inequalities which at present exist between city and suburban school districts . . . contravene the 14th amendment's equal protection guarantee." Relying on the quotation from Brown v. Board of Education, supra, -- "'where a State provides education, it must be provided

complaint are sustained, the financial system must fall and the statutes comprising it must be found unconstitutional.

IV

Defendants' final contention is that the applicability of the equal protection clause to school financing has already been resolved adversely to plaintiffs' claims by the Supreme Court's summary affirmance in McInnis v. Shapiro, supra, 293 F.Supp. 327, affd. mem. sub nom. McInnis v. Ogilvie (1969) 394 U.S. 322, and Burruss v. Wilkerson (W.D. Va. 1969) 310 F.Supp. 572, affd. mem. (1970) 397 U.S. 44. The trial court in the instant action cited McInnis in sustaining defendants' demurrers.

The plaintiffs in McInnis challenged the

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to all on equal terms'" -- the commission concluded that this passage "would appear to render at least those substantial disparities which are readily identifiable -- such as disparities in fiscal support, average per pupil expenditure, and average pupil-teacher ratios -- unconstitutional." The commission also cited the reapportionment decisions and Griffin v. Illinois, supra, concluding, "Here, as in Griffin, the State may be under no obligation to provide the service, but having undertaken to provide it, the State must insure that the benefit is received by the poor as well as the rich in substantially equal measure." (U.S. Commission on Civil Rights, op. cit. supra, p. 261 fn. 282.)

Illinois school financing system, which is similar to California's, as a violation of the equal protection and due process clauses of the Fourteenth Amendment because of the wide variations among districts in school expenditures per pupil. They contended that "only a financing system which apportions public funds according to the educational needs of the students satisfies the Fourteenth Amendment." (Fn. omitted.) (293 F.Supp. at p. 331.)

A three-judge federal district court concluded that the complaint stated no cause of action "for two principal reasons: (1) the Fourteenth Amendment does not require that public school expenditures be made only on the basis of pupils' educational needs, and (2) the lack of judicially manageable standards makes this controversy nonjusticiable." (Fn. omitted.) (293 F.Supp. at p. 329.) (Italics added.) The court additionally rejected the applicability of the strict scrutiny equal protection standard and ruled that the Illinois financing scheme was rational because it was "designed to allow individual localities to determine their own tax burden according to the importance which they place upon public schools." (Id. at p. 333.) The United States Supreme Court affirmed per curiam with the following order: "The

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motion to affirm is granted and the judgment is affirmed." (394 U.S. 322.) No cases were cited in the high court's order; there was no oral argument.[33]

Defendants argue that the high court's summary affirmance forecloses our independent examination of the issues involved. We disagree.

Since McInnis reached the Supreme Court by way of appeal from a three-judge federal court, the high court's jurisdiction was not discretionary. (28 U.S.C. § 1253 (1964).) In these circumstances, defendants are correct in stating that a summary affirmance is formally a decision on the merits. However, the significance of such summary dispositions is often unclear, especially where, as in McInnis, the court cites no cases as authority and guidance. One commentator has stated, "It has often been observed that the dismissal of an appeal, technically an adjudication on the merits, is in practice often the substantial equivalent of a

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33. The plaintiffs in Burruss attacked the constitutionality of the Virginia school financing scheme. The decision of the district court, which dismissed their complaint for failure to state a claim, was cursory, containing little legal reasoning and relying on McInnis v. Shapiro for precedent. Consequently, the parties to the instant action have centered their discussion on McInnis, and we follow suit.

denial of certiorari."[34] (D. Currie, The Three-Judge District Court in Constitutional Litigation (1964) 32 U.Chi.L.Rev. 1, 74, fn. 365.) Frankfurter and Landis had suggested earlier that the pressure of the court's docket and differences of opinion among the judges operate "to subject the obligatory jurisdiction of the court to discretionary considerations not unlike those governing certiorari." (Frankfurter & Landis, The Business of the Supreme Court at October Term, 1929 (1930) 44 Harv.L.Rev. 1, 14.) Between 60 and 84 percent of appeals in recent years have been summarily handled by the Supreme Court without opinion.[35] (Stern & Gressman, op. cit. supra, at p. 194.)

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34. Although the Supreme Court affirmed the McInnis decision, rather than dismissing the appeal, Currie's statement is probably entirely applicable anyway. In upholding decisions of lower courts on appeal, the Supreme Court "will affirm an appeal from a federal court, but will dismiss an appeal from a state court 'for want of a substantial federal question.' Only history would seem to justify this distinction. . . ." (Stern & Gressman, Supreme Court Practice (4th ed. 1969) at p. 233.)

35. Summary disposition of a case by the Supreme Court need not prevent the court from later holding a full hearing on the same issue. The constitutionality of compulsory school flag salutes is a case in point. For three successive years -- in Leoles v. Landers (1937) 302 U.S. 656; Hering v. State Board of Education (1938) 303 U.S. 624; and Johnson v. Deerfield (1939) 306 U.S. 621 -- the Supreme Court summarily upheld lower court decisions which ruled such requirements constitutional.

58 (footnote continued)

At any rate, the contentions of the plaintiffs here are significantly different from those in McInnis. The instant complaint employs a familiar standard which has guided decisions of both the United States and California Supreme Courts: discrimination on the basis of wealth is an inherently suspect classification which may be justified only on the basis of a compelling state interest. (See cases cited, part III, supra.) By contrast, the McInnis plaintiffs repeatedly emphasized "educational needs" as the proper standard for measuring school financing against the equal protection clause. The district court found this a "nebulous concept" (293 F.Supp. 327, 329, fn. 4) -- so nebulous as to render the issue nonjusticiable for lack of "' discoverable and manageable standards.'"[36] (Id. at p. 335.) In fact, the nonjusticiability of the "educational needs" standard was

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The very next year the high court granted certiorari in Minersville District v. Gobitis (1940) 310 U.S. 586, thereby providing for oral argument and a full briefing of the issue. Although in Gobitis it adhered to its earlier per curiam decisions, three years later the court reversed its position and ruled such requirements invalid. (Board of Education v. Barnette (1943) 319 U.S. 624.)

36. The plaintiffs in Burruss also relied on an "educational needs" standard in their attack on the Virginia school financing scheme, causing the district court to remark: "However, the courts have neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying needs of these students throughout the State." (310 F.Supp. at p. 574.)

the basis for the McInnis holding; the district court's additional treatment of the substantive issues was purely dictum. In this context, a Supreme Court affirmance can hardly be considered dispositive of the significant and complex constitutional questions presented here.[37]

Assuming, as we must in light of the demurrers, the truth of the material allegations of the first stated cause of action, and considering in conjunction therewith

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37. In a comprehensive article on equal protection and school financing, three commentators have stated: "The meaning of McInnis v. Shapiro is ambiguous; but the case hardly seems another Plessy v. Ferguson. Probably but a temporary setback, it was the predictable consequence of an effort to force the court to precipitous and decisive action upon a novel and complex issue for which neither it nor the parties were ready. . . . [T]he plaintiffs' virtual absence of intelligible theory left the district court bewildered. Given the pace and character of the litigation, confusion of court and parties may have been inevitable, foreordaining the summary disposition of the appeal. The Supreme Court could not have been eager to consider an issue of this magnitude on such a record. Concededly its per curiam affirmance is formally a decision on the merits, but it need not imply the Court's permanent withdrawal from the field. It is probably most significant as an admonition to the protagonists to clarify the options before again invoking the Court's aid." (Coons, Clune & Sugarman, supra, 57 Cal.L.Rev. at pp. 308-309.)

The Supreme Court's willingness to order a full hearing by a federal district court on the issues raised in Hargrave v. Kirk (see Askew v. Hargrave, supra, 401 U.S. 476), indicates to us that it does not consider the applicability of the equal protection clause to educational financing foreclosed by its decisions in McInnis and Burruss.

the various matters which we have judicially noticed, we are satisfied that plaintiff children have alleged facts showing that the public school financing system denies them equal protection of the laws because it produces substantial disparities among school districts in the amount of revenue available for education.

The second stated cause of action by plaintiff parents by incorporating the first cause has, of course, sufficiently set forth the constitutionally defective financing scheme. Additionally, the parents allege that they are citizens and residents of Los Angeles County; that they are owners of real property assessed by the county; that some of defendants are county officials; and that as a direct result of the financing system they are required to pay taxes at a higher rate than taxpayers in many other districts in order to secure for their children the same or lesser educational opportunities. Plaintiff parents join with plaintiff children in the prayer of the complaint that the system be declared unconstitutional and that defendants be required to restructure the present financial system so as to eliminate its unconstitutional aspects. Such prayed for relief is strictly injunctive and seeks to prevent public officers of a county from acting under an allegedly void law. Plaintiff parents then clearly have stated a cause of action since "[i]f the . . . law is

unconstitutional, then county officials may be enjoined from spending their time carrying out its provisions . . . ." (Blair v. Pitchess (1971) 5 Cal.3d ___; Code Civ. Proc., § 526a.)[38]

Because the third cause of action incorporates by reference the allegations of the first and second causes and simply seeks declaratory relief, it obviously sets forth facts sufficient to constitute a cause of action.

By our holding today we further the cherished idea of American education that in a democratic society free public schools shall make available to all children equally the abundant gifts of learning. This was the credo of Horace Mann, which has been the heritage and the inspiration of this country. "I believe," he wrote, "in the existence of a great, immortal immutable principle of natural law, or natural ethics, - a principle antecedent to all human institutions, and incapable of being abrogated by any ordinance of man . . .

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38. Although plaintiff parents bring this action against state, as well as county, officials, it has been held that state officers too may be sued under section 526a. (Blair v. Pitchess, supra, 5 Cal.3d ___; California State Employees' Assn. v. Williams (1970) 7 Cal.App.3d 390, 395; Ahlgren v. Carr (1962) 209 Cal.App.2d 248, 252-254.)

which proves the absolute right to an education of every human being that comes into the world, and which, of course, proves the correlative duty of every government to see that the means of that education are provided for all. . . ." (Original italics.) (Old South Leaflets V, No. 109 (1846) pp. 177-180 (Tenth Annual Report to Mass. State Bd. of Ed.), quoted in Readings in American Education (1963 Lucio ed.) p. 336.)

The judgment is reversed and the cause remanded to the trial court with directions to overrule the demurrers and to allow defendants a reasonable time within which to answer.

SULLIVAN, J.

WE CONCUR:

WRIGHT, C.J.
PETERS, J.
TOBRINER, J.
MOSK, J.
BURKE, J.

C O P Y

SERRANO v. PRIEST

L.A. 29820

DISSENTING OPINION BY McCOMB, J.

I dissent. I would affirm the judgment for the reasons expressed by Mr. Justice Dunn in the opinion prepared by him for the Court of Appeal in Serrano v. Priest (Cal.App.) 89 Cal.Rptr. 345.

McCOMB, J.

Dr. Coons. There are two general kinds of financial problems in public education.

One is the establishment of spending priorities, the traditional question of whether to give more or less for disadvantaged, gifted, or other categories of children.

The other is the problem of fair distribution among children of the same classification.

Serrano is really directed to the second problem—that is, the question of fairness of distribution—rather than to the issue of particular priorities or public policies in spending.

The kinds of relationships to which it is addressed are those between rich and poor school districts. By "rich" I mean rich in wealth per pupil—assessed valuation per pupil, property tax resources. California, for example, has an enormous range of taxable wealth in its school districts, from about $100 or $200 per pupil up to something around $1 million per pupil. Not surprisingly, this results in spending ranging from about $450 per pupil up to over $3,000.

In fact, I am informed that there is one school district in the State which has so much money it sends its children to Europe each summer on what is raised from the local property tax. I do not have the name of the district. I am just as glad I do not know.

Now, the tax rates, of course, are in inverse proportion. I am sure that rich district has a very low tax rate, probably one-fifth of the district rate for those that spend around $500.

Baldwin Park, Calif.

As a specific example, the district of Baldwin Park has a rate of about $5.50 per $100 of assessed valuation, whereas the district of Beverly Hills has a rate of $2.38, or somewhat less than half Baldwin Park. Yet, Beverly Hills spends approximately 2½ times what Baldwin Park spends.

Senator Mondale. When you say $2.13, is that the assessed or the imposed tax of $2.13—per what? Per $1,000 evaluation?

Dr. Coons. Per $100 of assessed valuation.

Now, the $100 of assessed valuation is, of course, according to the formula which is statewide, and which does not necessarily represent true market values. It probably represents one-fourth of the market value.

Senator Mondale. About a fourth of market, so they would be paying under that formula $2.15 on each $100——

Dr. Coons. $2.38, I think I said, Senator.

Senator Mondale. On each $100 of assessed valuation, which is probably a quarter of market value?

Dr. Coons. That's correct.

Now, I think it is important to indicate several misunderstandings about *Serrano*. The press, I think, misstated some of the basic issues.

This is not, for example, a simple problem of personal poverty. We often speak of poor people and rich people in these cases; and there may be, and probably is, some coincidence between personal poverty and district poverty. However, the central issue to which *Serrano* was directed is collective poverty, the poverty of school districts created by the State. Needless to say, of course, such collective poverty bears

hardest on poor families living in poor districts, because they are the ones who cannot escape to private education.

I do not mean to suggest that this is not a problem of poor persons but, rather, that one must distinguish the two issues. For example, in my own neighborhood, near Berkeley, there is a very small school district known as Emeryville, populated largely by poor families, which has an enormous tax base. Thus, there are eccentric cases in which poor families are advantaged by the present system and, vice versa, rich families sometimes live in poor districts.

I suppose that is important politically, in part because rich families living in poor districts who are being advantaged by this decision are likely to provide political support for its extension legislatively.

Likewise, *Serrano* does not necessarily speak to the urban problem. For example, San Francisco is well above the average assessed valuation per pupil in California. Los Angeles and Oakland are slightly above the average. And thus, in terms of the direct impact of the decision, it is not at all clear that some urban children, schoolchildren, will do anything but suffer in the short run. In the long run, it is likely that the rationalization and justification of the system will produce advantages for urban children as well as rural.

Senator MONDALE. In other words, in California the central cities, by and large, have a per capita assessed valuation which exceeds the average and thus may not receive any help—indeed, some may be subsidizing low-valuation districts?

Dr. COONS. That is correct.

Senator MONDALE. Depending on the formula.

Dr. COONS. It varies from city to city, and it does depend——

Senator MONDALE. Would it be the poor rural district that would benefit?

Dr. COONS. It varies. San Diego is well below the average. Modesto and Fresno and a number of large cities are well below the average. I think San Diego is probably explainable by virtue of the large Federal enclave which takes up a good share of the taxable—what otherwise would be taxable—real estate. I am not sure why Fresno and Modesto and some of the other inland cities are in that shape. I expect it is partly because they are rural areas without heavy industrialization.

CITIES LOW COMPARED TO STATEWIDE AVERAGE

The general pattern around the country, if I am correct, is that eastern cities tend to slip below their State averages more than in the West. Buffalo, Boston, I believe, Newark, Elizabeth, places like that, have already slipped below their State average, whereas in the West the pattern is somewhat different.

But I think it is fair to say that even in the West the cities are tending to become poorer in relation to the statewide average.

Now, it should also be said that the pattern is not necessarily connected with race. The minorities in California, for example, tend to live in cities above the average in assessed valuation per pupil.

This is not very surprising when you note that most of the black and Mexican children are in the cities of San Francisco and Los Angeles, which are above the average. Consequently, if that is the test, if being above or below the average in assessed valuation is the

criterion of discrimination, one could say ironically that minorities are being advantaged by the present system in California.

I would prefer to say that they are disadvantaged, because the real reference point should be the wealthier suburbs in the metropolitan areas rather than the cities.

Incidentally, I noticed in the morning paper that the *Detroit* case makes reference to this kind of problem, and perhaps later on Professor Yudof and Mrs. Carey might say something about the possible relationship of *Serrano* to the Detroit problem, if any.

Early Financial Inequality Litigation

The history of the litigation in this area begins in 1968 with the filing of the case in Detroit, which eventually was dropped by the plaintiffs, never brought to trial. The complaint in this case, however, became very popular among poverty lawyers. It was filed in a number of jurisdictions, most promptly in Chicago, in a three-judge Federal court in a case called *McInnis*, which went to the U.S. Supreme Court ultimately.

The plaintiffs lost. They lost on a theory which really was directed to the first kind of financial problem that I talked about, that is, the problem of spending priorities.

The plaintiffs alleged a constitutional right to spending according to the needs of the child, and the three-judge court responded basically that it was an unintelligible theory, that it was unapplicable in the judicial context; it would be purely a legislative remedy.

Fortunately, the *Serrano* case——

Senator Mondale. Did the U.S. Supreme Court affirm that judgment?

Dr. Coons. It did, without opinion, and without hearing or brief. It was per curiam.

Senator Mondale. They did not deny certiorari? They affirmed that judgment?

Dr. Coons. Well, it is important to clarify the jurisdictional relationship in this case, because from a three-judge court such as decided the *McInnis* case in the northern district of Illinois, the appropriate avenue to the Supreme Court is appeal and not certiorari, and the historic response of the Supreme Court to the three-judge Federal court, if it is not going to reexamine the case, is an affirmance; and it is questionable whether or not that act of the Supreme Court really means anything more than a denial of certiorari in a certiorari case. We really do not know what it means.

There was one dissent in the *McInnis* case in the Supreme Court, Justice Douglas; and in a similar case the following year, Mr. Justice White joined Justice Douglas in dissenting.

Now, meanwhile, in California, *Serrano* had been filed with a complaint which was very similar to the *McInnis* complaint. Fortunately, plaintiffs chose the State court. And, as a consequence, the history of *Serrano* was much more complicated and much more long-lived.

The three levels of judiciary in California meant that it took 3 years to get through; and, in passage through the California courts, the *Serrano* case became a good deal more refined. Eventually the needs allegation was dropped and the case focused on a theory which can be summarized this way: That the quality of public education may not be a function of wealth; whatever else the State may do about

education, it may not make the number of dollars spent per child a function of the wealth of a school district or of its parents. And this is the proposition which the California court adopted.

Basis of Serrano Decision

Senator Mondale. Did the Supreme Court of California base its judgment principally on the 14th amendment? Or is there a California constitutional provision which might make it unique?

Dr. Coons. The California court was ambiguous in this regard. There is a footnote which does cite the California constitution, that constitution was employed by the plaintiffs in their complaint, in their petition to the California Supreme Court. Some argue that the possibility of insulating the judgment against a review by the U.S. Supreme Court is there. But it seems to me, on balance, it is unlikely that the rather ambiguous reference to the California doctrine is going to protect the judgment from ultimate review by the U.S. Supreme Court.

However, I think it is fair to say that at this stage the case is probably not reviewable on certiorari because of a different rule. That is, that the final judgment rule in the U.S. Supreme Court will probably require that the case be tried. The case has never been tried. It came up on a demurrer. It is probable it will go back for trial before it is ripe for U.S. Supreme Court review.

I could be proved wrong, but at least at this stage of the game, this seems to be a fair application of the existing rules.

Senator Mondale. In your judgment, is the *Serrano* principle fully supportable under the 14th amendment?

Dr. Coons. Wholeheartedly, Senator.

Senator Mondale. And thus, in your opinion, this same attack is a valid one in any State of the Union which has this relationship of wealth to educational quality.

Hawaii Only Exception

Dr. Coons. Absolutely. There are 49 States which follow the pattern of California in permitting differences in local wealth to affect differences in spending, Hawaii being the only exception.

This is not to say that the U.S. Supreme Court will adopt the *Serrano* principle, but it seems to me that the rationale is perfectly appropriate.

We, of course, all who have been involved, do hope that the Court will take the same view.

The effect of the opinion and the effect of the principle that I describe is essentially this: That the legislature in the State is free to adopt any kind of system it pleases—within other constitutional limitations—so long as it does not tie spending to wealth of the district. Thus, it may choose to centralize so as to make all decisions at the State level as to how much shall be spent per child; or it may retain the existing districts or any other subunit, so long as each of those units has the equivalent capacity to spend—so long as, for example, a given tax rate in Baldwin Park will permit Baldwin Park to spend as much as Beverly Hills at that same tax rate.

Now, there are complex systems of subsidy and recapture and various kinds of rather complicated paraphernalia that may be used to effect that result. But, so long as the same local tax rate produces the

same capacity to spend, the principle would be satisfied. And thus, a decentralized system is still viable.

There is no prohibition in the decision against compensatory education, preference for gifted, preference for urban, preference for municipal overburdens, marginal utilities, any refinement imaginable, so long as it is not tied to wealth. This includes voucher systems which are fairly drafted.

Now, the effect on Federal programs is complex and interesting. The impact aid programs, for example, in States which implement *Serrano*, seem to have lost their rationale, at least insofar as the original reason for impact aid was to offset the loss to the district from Federal enclaves. And, if there is an impact on the States, it will now be moved up to the statewide level. Thus, any impact aid which is to be rationally distributed would have to be at the statewide level. And, frankly, it would seem to many of us that it would be good for Congress to reexamine the impact aid and see if it could not be more wisely spent in terms of poor children or in terms of some other kind of rational measure of educational need.

Senator MONDALE. What would Montgomery County do then?

Dr. COONS. I fear to respond.

But the remedial programs, on the other hand, seem still to be quite viable.

FEDERAL AID AND DUE PROCESS

Senator MONDALE. It is kind of a side issue, but what does the *Serrano* principle mean as applied to a school district that receives a heavy bundle of impact aid now? Would that be considered a source of wealth? Or would it be, since it comes under Federal Government, irrelevant?

Dr. COONS. Well, if a State had implemented *Serrano*—let's take an example, hypothetical, and suppose that California promply implements *Serrano* and gives every child $1,000. It keeps the school districts but gives every child $1,000. But San Diego receives an extra $500 per child for impact aid. I take it that *Serrano* itself would not invalidate that extra money, because the money would not have been given on the basis of wealth.

But how one would justify it in terms of rationality, I am hard put to say.

Senator MONDALE. So that if a school district found gold in the downtown area that permitted it to generate an additional $500 in the same tax effort for their schoolchildren, that would come within the *Serrano* decision; but, if they had an influential Congressman that distributed the gold out of the Federal Treasury, does it apply?

Dr. COONS. I am not sure. It seems to me that the "due process" clause of the 5th amendment might require a level of rationality in Federal spending which would make such a policy questionable. It would be a very interesting constitutional problem.

Senator MONDALE. You see, the theory of impact aid is that it substitutes for the absence of wealth at the local level——

Dr. COONS. Exactly.

Senator MONDALE. Arising from Federal installations, Indian reservations, and the like. And, theoretically, then, it ought to be included in the local tax resources in some way, or make an adjustment, it would seem to me.

Dr. Coons. I suppose one could say that the impact aid is given on the basis of wealth in that sense. It is given on the basis of the absence of wealth, or on the basis of poverty.

But the problem is that the problem does not exist in our hypothetical case. So that, in a sense, it is given on the basis of a factual misapprehension.

I am not prepared to give a very firm answer to that question, but I would be delighted to be involved in that law suit.

On the effect of *Serrano*, we might note just a couple of other problems, and then I will stop and let my colleagues proceed.

The effect of *Serrano* on other municipal services has been suggested in some of the news media. This is a mistake. The court explicitly confined its judgment and its opinion to education.

One can, of course, conclude that it is just as unfair to have an inequality of taxable wealth for sewers, police, fire protection, and the rest of it. We who have worked in this field tend to think that education is in some respects unique, in some very important respects unique, and the Court agreed with that decision.

Senator Mondale. Did they face up to that question, sewers versus education?

Dr. Coons. Yes.

Senator Mondale. And what was their argument there?

Education Is an Intellectual Right

Dr. Coons. Their argument was that education touches on the personality of the child. It is distinguished in terms of its intellectual character, as opposed to welfare and health services, sewers, and so on. In other words, I think that it is fair to summarize it that education is in some respects a kind of first amendment-oriented right. It deals with the mind and with the spirit and with the personality and, in that respect, has an added ambiance of protection that the other interests may not. It is in some sense more fundamental. It is an intellectual right.

Senator Mondale. I would ask the staff to cite at this point the Court's treatment* of that issue, because I think that is very important.

I find a good deal of acceptance for that principle when I talk to people, that this country ought, whatever else it does, to assure that every child has an equal real chance, that his potential is not impaired because of the failure of our institutions. What he decides to do with his life is up to him, but that he should be cheated in his early years, in his formative years, and thus be unable to have the range of choices that his abilities would otherwise permit is an outrage and is almost unpatriotic.

I think if a child grows up without an adequate sewage system, that is bad. But, if he grows up without the capacity to adequately count and read and understand and appreciate, that is a disaster. It is unjust. It is not welfare we are talking about. We are talking about justice. And I think there is a central theme here that has a strong public support.

I am glad to hear that the Court, in fact, sought essentially that.

* See *Serrano* v. *Priest*, previously printed at pp. 6812–6824.

Dr. Coons. The future of *Serrano*, as we indicated, is itself in doubt. We do not know, for example, whether some other case may very well meet the Supreme Court before *Serrano* does. I understand a number of suits have already been filed in various parts of the country, some in three-judge Federal courts; and it is perfectly possible that one of these will be decided by the U.S. Supreme Court long before *Serrano*.

Those of us who have been involved in some way in these cases would like to see these other suits examined carefully and perhaps slowed down to some extent, because we think the political response at the moment is very promising. The case has been well received in most quarters. The principle is beginning to be understood. It is no longer quite as threatening as it seemed at first. And many who would ordinarily resist a change of this kind have seen that it is not drawing the rich/poor line that they first thought that it did.

It does not threaten the property tax, and it does not require even spending across the State, and so on. So that we are hoping that the political response will be positive and substantial before the Supreme Court gets the decision in whichever case comes up first.

Senator Mondale. In Minnesota, the Governor has called for a dramatic increase in State support, using the *Serrano* arguments about the inequality of financial resources among school districts. He called for 70-percent operational support at the State level, and he would move from local real estate taxes, substituting a statewide income tax increase.

As the months have gone by, it is my impression there is growing public support for that. But then along came the *Serrano* decision, and that has greatly strengthened his position, it seems to me, because he can argue now it is not only the thing to do from an educational standpoint, but it may be the thing one must do; that is, in terms of equalization. The way to do it is something else, but the responsibility of the State for equality in financial input may be a legal requirement as well.

Dr. Coons. One of the basic arguments in *Serrano* has been that it is only through the judicial opening that the legislature will actually be liberated to undertake this kind of reform.

Senator Mondale. It is almost like the old one-man/one-vote principle. It is impossible to undo it without legal compulsion.

Dr. Coons. Let me just conclude with a couple of suggestions about possible congressional interest in this area. The availability of some $700 million in impact aid which now has presumably lost its rationale, at least in those States which implement *Serrano*, suggests its use elsewhere, of course. It could very well be employed in a Title I kind of framework, an improved Title I, hopefully, with greater assurance that the money reaches the disadvantaged children for whom it is intended.

Direct Provision to Families

One kind of apparatus that the Congress may wish to consider in this regard is direct provision to families through such media as school stamps, for after-school kinds of experiences for the children of the poor, whether it be violin lessons, remedial reading, or what have you. This is the only way to assure that the children get that money themselves and it is not diffused over a large class or an entire school or entire school district.

It may be also that a portion of this large sum could be set aside for voucher experiments, voucher experiments which would conform to the *Serrano* principle, which the present OEO proposal probably does not, because it is tied to the wealth of the school districts.

Over the long haul, it seems to me that Congress ought to perceive the notion of equality of opportunity in a manner which will free the notion of equality from the notion of sameness. Those of us who are rich and can afford to send our children to private schools, if we choose, have the opportunity for a lot of different kinds of education for our children. The next stage in our thinking ought to be how can we provide the poor not simply equality among themselves, in the sense that you can go to your neighborhood school and take there the same kind of education and curriculum that you could get at any other neighborhood school, but to provide the poor and average man with an opportunity for his children to have a wide range of options in education, perhaps both public and private.

Senator MONDALE. I notice your full statement comes down very hard on the choice principle, and I will not go into that fully this morning, but perhaps you can submit further information to us for the record.

Dr. COONS. I would be delighted.

Senator MONDALE. We will include that in the appendix to these hearings.*

Dr. COONS. Thank you.

PREPARED STATEMENT OF JOHN E. COONS

My name is John E. Coons. I am presently professor of law at the University of California: other biographical information has been provided the committee. The committee has graciously invited Mrs. Sarah Carey, Prof. Mark Yudoff and myself to report this morning on the background, scope, and implication of the recent decision of the California Supreme Court in *Serrano* against *Priest*. This is a particular pleasure for me, since I have devoted considerable attention in the last 10 years to the constitutional and policy problems presented in such cases. To my collaborators (Prof. William H. Clune III of the University of Wisconsin and Mr. Stephen D. Sugarman of the California bar) and to myself the decision represents a personal satisfaction as well as a unique opportunity for reform.

A brief sketch of the school finance problem and the litigation it has spawned in addition to *Serrano* may be helpful at the beginning. There are essentially two kinds of values at stake in the educational finance struggle. The first is the rational allocation of money to specific legislative objectives. This might be labeled the issue of spending priorities. It arises whenever legislators evaluate spending options such as remedial reading programs, vocational training, aid to disadvantaged children, or any of the infinite variety of other policy preferences that might be imagined in public education.

The second kind of financial objective is distinct from specific spending priorities but is closely related. It is the concern for fairness in spending among children of the same general class. If similar children in similar programs in contiguous school districts have a 300-percent variation in spending on their education, an elemental sense of fair dealing impels us to ask the State for some justifying rationale. The value at stake here may loosely be called fiscal equity.

In the view of most critics the taxing and spending systems in vogue in 49 of our States often frustrate both legislative spending priorities and fiscal equity. Let me illustrate. In California, school district A may have many disadvantaged children and receive a considerable Federal subsidy through Title I of the ESEA; yet this district may remain far behind its neighbor district B in spending. If the Federal policy is viewed as an effort to equalize opportunity, it remains essentially frustrated. Even worse, this disparity in spending may exist even

*See Part 16D, Appendix 7.

though district A makes twice the local tax effort of district B. There is thus no relation between the districts spending level and either its needs or its deserts as measured by its willingness to sacrifice for education.

The source of this fiscal inequity and policy frustration is the historic and widespread State policy of creating school districts of widely varying taxable property wealth per pupil and permitting these variations to affect the level of spending to which the local authority can aspire. The degree to which district spending per pupil is affected differs from State to State. The magnitude of difference within the typical northern industrial State with its clusters of extreme wealth and poverty can be staggering. In California the range of spending for elementary schools extends from about $450 to several thousands of dollars per child. The rates, of course, are related inversely. While a district like Baldwin Park taxes itself at $5.26 per hundred dollars of assessed valuation, nearby Beverly Hills carries a rate of only $2.38. Meanwhile Beverly Hills spends per pupil at well over twice the level of the poorer district.

California, like most States, has created an apparatus for sending dribbles of State money to poor districts such as Baldwin Park, but, as the example illustrates, the final effect of the system is little more than a complex facade to divert the outrage of families in poor districts. The technical operation of this rather typical system of local tax and State subventions in California is described in the amicus curiae brief filed in *Serrano* by Mr. Sugarman and myself on behalf of the Urban Coalition and the National Committee for Support of Public Schools. This brief has been supplied the committee, and there is no point in detailing it here. However, I cannot resist noting that California—like Illinois, Arizona, and other States—through a peculiar interdependence of its subventions, actually directs a fair share of its State subventions not to poor but to rich districts. This surprising subsidy for the rich districts did not escape the attention of the California court in *Serrano*.

The legal attack on such school finance structures entered the judicial phase in 1968 with the filing of an action in State court by the school board of the city of Detroit against the State of Michigan. This case came to nothing and was eventually dropped. Regrettably its theory was adopted by a number of complaints filed shortly thereafter in Illinois, Virginia, and elsewhere. That theory in essence was that each child has a 14th amendment right to spending in accord with his needs. It was basically an effort to express spending priorities through the Constitution. The problem with this approach—one problem—is its limited intelligibility; the Federal courts in Illinois and Virginia that actually reached judgment on such cases labeled the concept judicially unmanageable, and that seems a fair description. In any event the U.S. Supreme Court affirmed the two judgments without hearing and without opinion.

During these false starts the *Serrano* case languished. It had been filed in the original rush after the Detroit complaint; however, being filed in State court it proceeded at a rather more stately pace through the three tiers of the California judiciary. This proved to be a great advantage. The plaintiff's theory which originally had shared some of the weaknesses of the Detroit complaint had an opportunity for refinement. In the 2 years that it took to sustain the State's demurrer and to have that judgment affirmed at the first appeal level, the case became focused purely upon the second objective noted above—that is, simple fiscal equity. When the California Supreme Court surprised everyone by agreeing to review the case, the various lawyers involved had a manageable principle to offer the court: that under the 14th amendment and the California constitution the quality of public education may not be a function of wealth other than the wealth of the State as a whole. This principle is occasionally expressed in abbreviated form simply as fiscal neutrality.

At that point in time—fall of 1970—because of the importance of the case a number of friends of the court joined in support of the plaintiff's cause. Beside the Urban Coalition and the National Committee these included the Mexican American Legal Defense Fund, the Youth Law Center, the Center for Law and Education, the A.C.L.U., the San Francisco School District and others. In fact the briefs filed in the appeal were all submitted by friends of the court. The case was argued by the plaintiffs' lawyer, Sidney Wolinsky, and by Mr. Sugarman and myself. The central legal argument offered in support of the proposed constitutional rule of fiscal neutrality among districts was basically this: that judicial intervention is crucial because of the structural immobility of the current system: that classification by wealth is suspect under relevant constitutional doctrine; that education is a fundamental interest deserving special protection; that the State's

interest in emphasizing local government of schools may be satisfied without violating the child's alleged right to a system based upon fiscal neutrality.

The court decided 6 to 1 in favor of the children, adopting the legal argument just outlined and declaring, as hoped, that the quality of public education may not be a function of wealth. The case promptly received enormous attention from the media, some exulting that it implied the end of the property tax and others warning that this meant the inevitable centralization of fiscal decisionmaking in education.

Neither view is even close to the reality. The court in fact suggested no infirmities in the property tax; indeed it was not asked to do so. It carefully avoided any threat to local government. It left open almost the entire spectrum of previous legislative options including spending preferences for disadvantaged children, the physically handicapped, the gifted, special curricular policies, geographical cost variations, municipal overburden, marginal utility, economies of scale, and district willingness to tax itself for education. In short the court did not speak to the question of spending priorities but confined itself to fiscal equity. Further, in dealing with fiscal equity it proscribed only such differential spending as is based upon wealth differences. All it required, in other words, is fiscal neutrality among persons and school districts.

Thus the State remains free to centralize or not centralize decisionmaking regarding spending. The legislature, for example, may keep the existing system of district authorities and permit differences in spending from district to district so long as those differences are based upon differences in local tax effort. All that is required in such a decentralized model is that each district have equal capacity to spend. This is not so difficult to arrange as it first appears.

Power equalizing of subsidiary units of government can be provided in a number of ways. One simple approach is for the legislature to enact a table of relations between the locally chosen educational tax rate on property (or, preferably, income) and the amount per pupil that the district is permitted to spend. Such a table for a hypothetical State—a rather wealthy State—might look like the following:

	Permissible Expenditure
Local tax:	
1.00 (minimum)	$900
1.01	950
2.00	1,400
3.00 (maximum)	1,900

Within the maximum and minimum limits set by legislation each district would be free to decide what it wished to spend; this local choice would trigger a corresponding tax on local wealth. If that local tax raised less than the permissible expenditure, the State would supply the difference from central sources. In districts where the proceeds exceeded the permitted expenditure, the excess would be redistributed to poorer districts. In short, all districts choosing the same tax rate would spend at the same level. Spending thus would become a function only of the district's interest in education. There are ways to structure such systems so that the amount of excess money raised locally beyond what the district is permitted to spend can be reduced to nothing.

This, of course, is but one of many possible models. The legislature might wish to combine such power equalized local option with specialized spending preferences of various kinds. A State might wish for example to have a three-part spending program like the following:

(1) A basic $800 per child supplied to the district totally from central State sources.

(2) Permissible local add-ons at the rate of $25 extra spending permitted for every mill of local tax up to a maximum, add-on of, say, $600. (Obviously if more is raised by each mill than can be spent, there must be redistribution.)

(3) Categorical aids per pupil for disadvantaged, cost variations, municipal overburden, and so forth.

There are, of course, many reasons other than merely political that a legislature might wish to retain local option to the decree permitted by part No. 2 in this hypothetical scheme. In most States these reasons will be augmented by persuasive political arguments. Indeed, it is probably fair to predict that, even if the *Serrano* result becomes infectious or is affirmed nationally by the Supreme Court that local spending differences based on local choice will continue in many parts of this country. Unlike the existing pattern, however, the higher spending will then occur in those districts with the greatest commitment to education rather

than the greatest wealth. It is also likely (as is now the case in Hawaii) that some States will decree uniform statewide spending levels.

After *Serrano* both decentralized and centralized systems present some interesting problems of adjustment for Congress. Consider in this connection the effect of *Serrano* on impact aid (Public Law 874). A central theory of the federally impacted areas program has been that the district with Federal activity, land, and employees suffers an effective reduction of its taxable wealth per pupil. Once *Serrano* is implemented such impacts will no longer be felt at the district level, for either all districts will have an equal capacity to raise dollars or else the State will have completely centralized the process of money raising and spending. Thus impact aid as presently distributed would come to the district in an utterly irrational manner—that is, on the basis of factors the effect of which has been eliminated.

If impact aid hereafter were considered appropriate at all in States which implement *Serrano*, it should be paid in a lump at the State level, for after full equalization it is the State as a whole (not the district) which will be impacted. However, my present opinion is that such aid should be paid to *Serrano* States on some basis other than its impact on property tax. Both the need for and the effects of statewide impact aid would be problemmatical and would vary greatly in relation to the particular State's dependence upon property tax as well as other variant factors. But even more basically, even today it is probably untrue that States ordinarily experience a net burden from Federal activity; in fact the significant political effort expended to attract Federal programs strongly suggests the opposite.

The alternative useful employments for the $700-odd million in Federal impact aid are numerous. If, for example, Title I of the Elementary and Secondary Education Act were properly amended to assure fulfillment of its objectives, at least part of this amount could well be shifted to swell the magnitude of Title I appropriations. Indeed any system for bringing this money efficiently to the children of the poor would be an improvement over the impact approach. A substantial segment of this resource might usefully be employed to experiment with systems for increasing the educational options available to the poor including school stamps and so-called voucher systems. I do not here refer to the current voucher scheme proposed by the Office of Economic Opportunity; being tied to district wealth and spending that proposal would itself violate the *Serrano* principle. Rather I suggest consideration of earlier proposals not suffering such defect.

One of these suggested by Messrs. Clune, Sugarman, and myself in 1969 was designed as a State-created and controlled apparatus operating, if necessary, exclusively with State funding. So structured it would fit with simplicity into a general Federal subsidy to the State for experimental use of vouchers. This system is now embodied in model legislation by Mr. Sugarman and myself entitled "The Family Choice in Education Act" published jointly by the Institute for Government Studies and the California Law Review. The committee has been furnished a copy of this work with its supporting analysis. While the authors do not suggest that this system is the ideal model—indeed we intend to modify it in several important respects—we do believe that it anticipated and avoided many of the unfortunate weaknesses of the later OEO proposal. Nevertheless we believe that, if properly modified in accord with the *Serrano* principle (and with certain elementary precautions against discrimination by private schools) the OEO model would be one of several schemes worth testing in a series of long-range experiments with family choice systems.

For my part I can imagine no more significant contribution from Congress than an effort to provide the poor and average family with those options in education that the rich take for granted and which—if one can afford them—are protected by the Constitution. It is an irony that fundamental law makes the family's choice in education constitutionally secure from preemption by the State, yet practically available only to the wealthy. The eccentricity of this state of affairs is obscured by the habit of a century, yet this insistence that the poor take what we assign them in public education is but a convention. Systems of variety and choice for the poor, average, and wealthy family are technically available if Congress wishes to promote them. The decision in *Serrano* v. *Priest* by happy chance may have provided an unexpected resource from which to begin the basic experiment.

Let me suggest another relevance of *Serrano* to the Federal power before I conclude. This committee is well aware of the authority and responsibility of Congress under the 14th amendment. The rights at stake in *Serrano* are not merely a concern of the judiciary. The amendment, section 5, provides:

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

It would be hard to imagine a more appropriate employment of this congressional power than an embodiment in Federal legislation of the *Serrano* principle. This could include a declaration that State systems offensive to this principle are invalid, perhaps coupled with standing in the attorney general and/or injured private persons to seek injunctive relief in Federal court. Congress could on the other hand merely withhold Federal aid from States which operate their school systems in violation of the principle; the difficulty is that the immediate impact of such a constraint would probably be felt most painfully by its intended beneficiaries—the children of poor districts.

Whatever else Congress does it will have to respond to the essential differences between centralized and decentralized State systems, unless the States settle upon a homogeneous pattern. The latter is an unlikely outcome, and Congress should prepare itself to consider systems of Federal subvention which may require rather considerable sophistication if they are to articulate smoothly with the variety of underlying new State structures.

In this regard Congress may have to accept some continuing frustration of its own educational spending priorities. Indeed this is inevitable in those States choosing to retain a decentralized fiscal model. If district A and district B, though now equal in capacity, freely choose to spend at different levels, at least part of the old problem remains—that is, compensatory money may still leave gaps of some significance if the recipient district has chosen to carry a lighter load of school taxation. This is one of the prices of local control; indeed, many regard it as one of the chief virtues of *Serrano*. In my view no court is likely to forbid such local differences in spending, nor should it.

The historic and invidious spending variations caused by wealth differences are a far cry from those stemming from free political choice expressing a community's view of its own needs and priorities. Further, it is certain that the magnitude of spending differences will be extremely modest compared to the present span. Of course, Congress could offer rewards to States which centralized decisionmaking or, where decentralized power-equalized models are adopted, it could reward high taxing districts. Either course would seem to me an excessive interference with a perfectly proper choice of the State.

These few observations on the appropriate Federal response to *Serrano* are sketchy and merely preliminary. Those of us closest to the problem in California have barely been able to cope with issues presented at the State level much less analyze the effect upon the Federal scene. Ultimately, however, we hope to make a larger contribution at the Federal level. Indeed, in a moment of transport during the preparation of the volume "Private Wealth and Public Education" my collaborators and I went so far as to imagine a federally structured system for power equalizing the States. I am not certain which millenium we had in mind, but I am not sorry that such a notion is now in the idea bank. In fact, if one is writing for the millennia he should also include a national family choice system with families equalized in their capacity to attend all schools—public and private—within the system.

In all of this speculation it was not the intention to lose sight of the *Serrano* case itself. Its fate is, of course, still unclear. The State has asked the court or a limited rehearing largely for the purpose of clarifying issues on which the State attorney general believes the court's opinion is ambiguous.

This request could involve delay of from a few weeks to many months. It may or may not be followed by a petition for certiorari to the U.S. Supreme Court. At this stage the latter would seem premature under the final judgment rule of the Federal high court; probably the effect of the petition would be merely another lengthy delay before the trial of the factual issues. Ultimately these facts may be stipulated; they are largely matters of public record, and by forcing proof of every issue the State could only have further delay as its object. If the State thereafter insisted on its right to successive appellate review more delay would follow. By the time the U.S. Supreme Court has the chance to accept the case for review, it may already have decided another case on the same issue arising through the more expeditious route of the three-judge Federal court and the mandatory appeal. In short the judicial future even of *Serrano* itself is shrouded in doubt.

In the meantime at least two kinds of things seem to be happening. First, lawyers and their clients in large numbers are filing or threatening suit against their respective States. Those of us in *Serrano* hope to restrain their ardor at

least long enough to hold a lawyers' conference on the *Serrano* case in Washington, D.C., on the 16th of October. A model complaint is in the course of preparation and will be available at that time, and there are serious legal risks that such a conference may help to diminish.

Secondly, a significant political response to *Serrano* appears to be in the making. If the number of political statements vowing implementation of the principle is any indication, legislators may, for the first time, be giving serious consideration to the restructuring of State systems. Likewise scholars, legislative counsel, and social scientists are commencing the difficult work of putting flesh on the so-far theoretical skeleton of power-equalized district systems. Roughhewn proposals for such systems are already beginning to appear in California alongside other proposals for statewide uniformity. As predicted by the plaintiffs in *Serrano* the principle of fiscal neutrality is proving to be less an interference with legislative prerogative than a powerful stimulus to what may prove to be the first thoroughgoing legislative consideration of the basic structures of school finance since the advent of public education.

Senator MONDALE. Let us go to Professor Yudof, who, I understand, cooperated with you.

STATEMENT OF MARK G. YUDOF, PROFESSOR, SCHOOL OF LAW, UNIVERSITY OF TEXAS

Dr. YUDOF. Yes, I submitted an amicus brief in *Serrano*.

I think the professor has adequately set forth the theory of *Serrano*, and I would like to focus on a number of its implications as I see them.

The first thing I think that is very important—in terms of the mass consideration—the impact of this decision is that *Serrano* is not a decision which has as its basis the redistribution of wealth in the country. It does not hold the pricing of all private and public goods is unconstitutional because some people cannot afford the price. In other words, the California Supreme Court is not redistributing color TV's and Cadillacs.

Senator MONDALE. But it is doing something very revolutionary.

Dr. YUDOF. I believe it is. But I think it is a decision which is very narrow in its scope, saying education is so important and so fundamental, and that it is funded——

Senator MONDALE. Would you say it was narrowly revolutionary?

Dr. YUDOF. Yes, narrowly revolutionary.

The second point, I think is important, is that the *Serrano* decision focuses on the operation of the California financing system. It focuses rather more on the effect of that system than on any search for what might be called a discriminatory motive.

As Professor Coons has said, there is no section of the California statutes that one can point to that says, "We are out to do in poor districts or poor children." It is just the natural operation of the system, and the court is not concerned by that. I think that may have greater consequences for the de jure/de facto distinction which has been drawn in the area of desegregation.

The third point that is terrifically important is: That we are all concerned with the fate of taxpayers, and whether taxpayers in some areas of the State are unreasonably burdened in relation to other areas of the State; and, also concerned with the type of education that our children are getting. But, I think, there is another point there, and that is the basic constitutional premise of ethical conduct. I believe the Supreme Court of California has said that if those things are important—but what we are really concerned about is the social

injustice in dealing with one class of children—that they are somehow less deserving of our education dollars than are another class of children.

I think that also has a lot to do with the genesis of the *Brown* opinion.

Another important point—and I agree with Professor Coons; this has been widely misinterpreted—is that this decision does not mark the demise of decentralized decisionmaking in favor of some form of mindless equality. The Supreme Court of California has not mandated equal expenditures for every child in the State. Nor has it intervened to fix political priorities within each community. It has not told the community that it must choose highways, or hospitals, or police protection, or schools, in any particular order.

Poor Districts Have No Choice

Rather what has happened here is that the judiciary has recognized that local control—as it is manifested within the current structure—is largely a hoax. And, it is a hoax in the sense that poor districts do not choose to spend less for education. It is not a question of their valuing other municipal services more.

The point is that these districts are just incapable of spending more for education.

Senator Mondale. As a matter of fact, in most cases, the poorer districts are trying much harder?

Dr. Yudof. Yes, that is, indeed, the case. And I think that was one of the things the *McInnis* decision, in the original case—which did not get very far—that was one of the problems there, that the court did not really understand. They thought we were preventing each community from making decisions about education.

Another point which I think is worth emphasizing is that the beneficial effects of the *Serrano* decision reached far beyond poor and minority group students, and that is that children of all races and income levels who happen to reside in these poor districts are going to benefit.

And, I think, if I may just take a very short quote from the decision—I think it is important to see what the quote said:

> The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the State. To allot more dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private, commercial, and industrial establishments. Surely this is to rely on the most irrelevant of factors as the basis for education financing.

I think, therefore, it is not only discriminatory in a large sense, this scheme is really irrational. The accident of whether you happen to have a Du Pont plant in your district really has an awful lot to do, under the current schemes, with whether or not your child receives an adequate education.

Beyond the decision itself, I think it is appropriate to ask: How may legislatures react to *Serrano*-like decrees? What are they likely to do in the event of a declaration that the current financing schemes are unconstitutional?

And, at the outset, I think I agree with Professor Coons that the result initially will be to remove many of the bars to reform that have

plagued legislatures. As you mentioned, Senator, the Governor of Minnesota, and also the Governor of Pennsylvania, have proposed significant reforms in this field. Heretofore, at least, those reforms have not been acted upon, and we might expect that the *Serrano* decision will, indeed, break a logjam and strengthen their hand.

In terms of the specific schemes that will be adopted, it is very difficult to predict. What we would like to say is that the changes are really endless. Centralization, decentralization, diversity, or uniformity; absolute equality, or compensatory programs. I think there are a number of ways that the legislatures may go.

One obvious way would be to allocate funds on the basis of the characteristics of the consumers of the goods, the child. Particular skills and handicaps could be made the basis for educational financing.

The value of preferences might include the educationally disadvantaged, the artistically talented, physically handicapped, or the emotionally disturbed child.

Although this has not received wide consideration, that funding could be done on the basis of characteristics of families. If the family is poor, their poverty could be treated as a shorthand for the greater educational needs of the children in the family. On that basis, the district might receive more funds.

Finally, we might have a scheme that is similar to what we have now, and funds could be allocated on the characteristics of school districts. Obviously—leaving out the characteristic of the relative wealth of the districts—you might take such factors as the number of pupils, the number of schools, willingness to make a tax effort to raise educational dollars; or, the degree of racial integration in the district could all be considered.

Racial Integration in Massachusetts

Indeed, Massachusetts' racial integration is one of the considerations which goes into the amount of State funds which are received by each individual district.

Senator Mondale. Where is this?

Dr. Yudof. Massachusetts.

Senator Mondale. You mean that is what the law is?

Dr. Yudof. That is the law; yes.

In addition, extra dollars could be distributed to communities where the cost of providing educational services is appreciably higher because of higher living costs. Also, urban communities could be compensated for the extraordinary burdens imposed on their fiscal resources by competing demands for such municipal services as welfare, street maintenance, and fire and police protection.

Another thought that hasn't been brought out, even assuming if poor districts make an effort which is no greater than that being made by rich districts, in terms of their marginal costs, they are really much greater because for poor people that money is really coming out of their necessities, coming out of the money they should be spending for shelter, or food, or basic necessities, whereas in richer districts the money is much more marginal in the sense it may well come out of savings and bank accounts, and so forth.

The important point, I think, is that local control under any of these methods of funding is not hindered. The formula for distributing dol-

lars to districts is not dispositive as to the issue of how the funds will be spent. I think a familiar parallel can be drawn from Title I, which allocates money under a formula based upon the number of poor children, but which, nonetheless, finances educational services for all educationally deprived children living in eligible attendance areas. Thus, the funding remedies which flow from the *Serrano* decision are compatible with any legitimate State interests in local initiative.

For example, under nearly all the plans I have mentioned, the legislature could allow local school districts to make educational policies and to exercise broad discussion——

Senator MONDALE. As a matter of fact, these poorer school districts, by receiving adequate outside help, would find they had more authority, more power, over the education of their children than they do today.

I was struck, when we talked to superintendents of these poorer school districts, by the note of despair that comes from having the apparent power to control the direction of the education but, in fact, all of their time is spent cutting the budget, trimming, laying off teachers, trying to figure out how to conduct classes in a condemned school building, and the rest. They are really hardly involved in education at all.

Dr. YUDOF. Yes; I think that is another example.

Senator MONDALE. To say they have control is to assert a meaningless technicality.

Dr. YUDOF. I think that is right. And, as you say, the districts, the poorer districts, will have greater discretion now to fund extraordinary programs. For example, for bilingual education or education of the disadvantaged.

The important point is to say there is nothing inherent in *Serrano* that prevents that result. *Serrano* does not mean that the State of California is going to tell each and every district in the State how to run its affairs.

WHAT SHOULD BE FEDERAL RESPONSE?

Another point which Professor Coons touched upon is the Federal response, what should be the Federal response in light of the *Serrano* decision? And I guess I take a somewhat more negative view. And, as a minimum, what I would hope for is that Federal education statutes would not undo the *Serrano* results. That is, at the very least, the impact aid legislation should take into account in some measure the local wealth of the school district, and not cause a disparity by virtue of the Federal allocation.

I think Professor Coons' idea about the money going directly to the State governments is a much better idea and would not result in the type of disparities that we are talking about.

A further step, I think, would be to strengthen the formula for allocating Title I funds. As you know, now any district that has 10 or more poor children qualified for Title I assistance. And, of course, those districts with very small numbers of Title I children, by and large, are your wealthier districts; and, therefore, the funds that go to those districts are really antiequalizing in their effect.

Finally, I think it is conceivable that, if the Congress and the Executive are serious in their efforts to diminish interdistrict resource

disparities, that district wealth equalization could be made a prerequisite for the receipt of Title I funds.

Senator MONDALE. Let me ask you this. What about the possibility of a constitutional challenge on interstate disparity? You have been dealing with interdistrict differences within a State, and you have obtained a decision from one of the most prestigious supreme courts at the State level, holding that the 14th amendment prohibits those differences in the way they have been described. But, there are vast differences in the resources between States, are there not?

Dr. YUDOF. Yes; there are.

Senator MONDALE. For example, suppose *Serrano* were applied immediately, and all children received essentially an equal input, or, at least, the districts were empowered to do so, if they wanted to. What about the difference between an American schoolchild growing up in Mississippi or Arkansas and an American schoolchild growing up in New York or California? Would there still not be a disparity of still maybe 50 percent?

Dr. YUDOF. I think that is exactly right. The greatest span is probably between Arkansas and New York. I think the disparity is 2-to-1.

Senator MONDALE. So, would it be subject to a constitutional challenge?

Dr. YUDOF. In my opinion, no, probably not. The Constitution does not contain an explicit clause relating to education. I think the general understanding was that this was properly delegated to the States, and I think it would be very difficult to challenge.

Senator MONDALE. I would like the other panelists to respond on whether you agree with that.

Mrs. CAREY. I think I would agree with his reading, particularly that the 14th amendment—that most of these cases have been hung on—applies only to discrimination by States within their borders. But there is no reason why the Federal Government could not initiate a program where it would provide funds that would make up the differences.

Senator MONDALE. As a matter of public policy. But I am wondering whether there is a legal case to challenge the interstate differences.

Dr. COONS. I do not see any either, Senator, I am sorry to say. The 5th amendment, even if we assume that it carries the *Serrano* principle implicit in it, would only then speak to existing Federal programs. That is to say, under the 14th amendment *Serrano* does not say to the States, "You have to run an educational system." It simply says, "If you have one, you cannot let wealth differences determine the distribution."

The 5th amendment might say to the Federal Government, "If you are going to spend money for education, you cannot spend it so as to cheat poor States."

But I do not think the Federal Government is cheating poor States. At least, I do not know that it is. And, if it is, it is certainly to an insignificant degree.

However, I agree with both Professor Yudof and Mrs. Carey, as you know from my statement that the Federal Government could in some imaginable future undertake to, as my colleagues and I would put it, "power equalize" the States—treat the States in the same way that some of us hope California will treat its school districts, giving

each the capacity to spend on its children in equal amounts, if it is willing to make the same kind of local effort. So, one can imagine a national system of that kind.

But, for the moment, I guess my political sense says it is largely hypothetical. If I have any. Which is doubtful.

Equalization Precondition to Title I

Dr. Yudof. The point I was going to make about the lack of making equalization a precondition to receiving Title I funds is that the big problem under Title I law is now that the services are characterized as compensatory or supplementary, and they are really not. They are only supplementary and compensatory in terms of what that district had before the Title I funds came into the district. But it is just the fact that what is compensatory service in Boston or Philadelphia is something which is made available to every schoolchild in the surrounding suburban areas. So, in a real sense, the purpose of giving poor children some sort of break in education—he is just not getting in. It is just not there.

Senator Mondale. I agree. People say Title I has failed. But, if you look at the amount being spent per pupil in Title I areas it is still substantially below that being spent in the great suburbs; and usually the State aid systems deliver more to the rich than to the poor.

Dr. Yudof. Yes; we found that to be true in Texas, for example.

Senator Mondale. We have had testimony on that. Texas is one of the worst systems of all in delivering wealth to the wealthy.

Dr. Yudof. That is right. Because it was on the basis—if you could afford to hire well qualified teachers, you were reimbursed for that. So the riches went to the already rich. One of the problems I think that remains in the wake of *Serrano* is once you have equalized between districts, there is utterly no guarantee at all that poor children are in fact going to profit from that redistribution. The evidence—and it is mounting—is that school districts allocate fewer dollars to schools in predominantly poor and minority group neighborhoods. And lawsuits challenging these policies have been filed in a number of cities, most recently in Chicago, and in the District of Columbia, Judge Wright in *Hobson* v. *Hansen* declared that these types of invidious discriminations were unconstitutional. The problem from the Federal Government's standpoint is, I think it is fair to say, the Federal Government has wavered in its support of these efforts to equalize intradistrict. In February of 1970, James Allen, then Commissioner of Education, issued guidelines to chief State school officers requiring that local funds be allocated equally between schools in rich and poor neighborhoods as a condition of eligibility for Title I funds. There was a swift congressional action in April of that year. The so-called comparability guidelines were suspended for a period of 2 years. And I think what is even more tragic about this is that the Office of Education has done absolutely nothing since that time to either encourage districts voluntarily to equalize expenditures between the rich and poor neighborhoods or to prepare for the period beyond the 2-year suspension. As it stands now, the formula is that they exclude all longevity pay, which in many cases is the bulk of disparity, and also they now compare the average of the non-Title I schools with the Title I schools in determining whether comparability is applicable. And that formula is really rigged.

I would venture to say there would be very very few districts in the country that could not comply with that type of standard.

So, my recommendation is, if *Serrano* is not to be emasculated at the district level, what should happen is that the elementary and secondary act should be amended. As I understand, the original Senate version the last time through did contain a comparability provision, and that somehow we should prod the Office of Education to aggressively enforce that congressional policy.

I think as a final note, somewhat gratuitous, that personally I am not at all sanguine about the *Serrano* principle in terms of total reform of American education, because I think the mere infusion of dollars will not assure a creative and stimulating school environment, or nourish diversity or dispel the fear and paranoiac concern for order and silence which pervade the public schools.

Qualitative as Well as Quantitative Reforms

I think it is also fair to say that the effects of *Serrano* are not necessarily going to be translatable into programs that will work, in terms of do we know how to educate the non-English-speaking student or the physically handicapped.

So, I think what is really needed to go hand in hand with *Serrano* is qualitative as well as quantitative reform. In short, what is needed is innovation, something we have not seen for a great while in education. And that brings me to what I think should be the proper role of Government. It seems to me that, if the present school systems are so overburdened that it is very difficult to finance new and innovative programs, and, if the attitudes of at least some school administrators make such programs unlikely, it seems to me that the U.S. Office of Education should be taking the initiative. What Congress should be funding is not direct services to schools and to the schoolchildren, but it should be funding innovation and qualitative reform, experimentation.

As things stand now, I think the U.S. Office of Education is not fulfilling that promise in any sense of the word, and that they are merely a conduit for providing more of the same. As you have pointed out, not much more of the same.

PREPARED STATEMENT OF MARK G. YUDOF

Mr. Chairman, Senators, Ladies, and Gentlemen:

Since the assertion of the public interest in education and the abrogation of unqualified parental discretion, local control of the public schools has been a vital component in the development of the American education system. While, under nearly every State constitution, the States have the authority to operate the public schools, they have chosen instead to delegate this responsibility to local school districts. For the most part, State governments have remained aloof from the essential tasks of setting priorities and raising funds for educational purposes, preferring instead to fix minimum standards for certification of teachers, curriculum, and other gross indicators of educational quality. In part, the effects of this delegation have been beneficial: local communities, through lay boards of education, have been able to mold or at least attempt to mold their schools to meet the needs and expectations of the particular community that was being served. Today however, putting aside questions as to the continuing viability of local school districts in a heterogenous society, the effects of this delegation are plain: wealthy towns generously support public schools with little tax effort; poor communities tax themselves five and 10 times more heavily, only to raise

fewer dollars per child. The problem then, to which the litigation in *Serrano* v. *Priest* responded, is to redress these fiscal inequities while preserving whatever benefits remain from local dominion over the public schools.

In *Serrano* v. *Priest* the Supreme Court of California held that that State's plan for financing public schools was unconstitutional under the equal protection clause of the U.S. Constitution. The court found that students in poor districts were systematically denied equal treatment in the allocation of public resources for education. The decision is of great significance since the California approach to school finance, with its attendant complexities and inequities, in many ways typifies the schemes which are in effect in most States. California makes flat grants to all school districts, grants which in operation benefit only rich districts. It has embarked on a program of "equalizing" grants designed to close the gap between districts, but, in fact, poor districts are guaranteed only half the education dollars per student spent by an average district in the State. The great bulk of revenues for education is raised by local property taxes, and thus a premium is placed on the differing capacities of local school districts to supplement the State grants. The effect of this system in California, as in New York, Texas, New Jersey, and elsewhere, is that the distribution of public dollars for public education is made to turn directly on the wealth of each particular school district, as measured by the assessed property valuation per student. Predictably, in California spending ranges from about $350 per pupil in poor districts to more than $3,000 per pupil in wealthy districts.

The constitutional theory of *Serrano* v. *Priest* finds its genesis largely in the writings of Professor Coons and his colleagues. They assert that it is constitutionally impermissible for the quality of education to be a function of wealth other than the wealth of the state as a whole.

"Quality of education" is defined in terms of dollars per pupil, and the thrust of their constitutional standard is that a family's or a district's economic means are illegitimate criteria for the State to employ in distributing funds for education. The Supreme Court of California substantially adopted this theory, reasoning that education is a fundamental interest which cannot be denied the poor absent some compelling justification. In light of the failure of the State of California to show such a compelling justification which could not be satisfied by a less onerous alternative, the court found the California financing scheme violative of the equal protection clause of the 14th amendment.

In reaching its conclusions, the court relied heavily on the significance which American society places on education. Public schools are commonly viewed not only as inculcators of the common culture or, in Dewey's phrase, as promoters of "civic efficiency", but also as legitimate instrumentalities for resolving political conflicts and achieving socioeconomic mobility. While many commentators have lamented what they deem to be an overreliance on formal schooling as an indirect method of redressing essentially extrinsic social problems, the court held that a child's education is a major determinant of his life prospects, finding support for this view in the compulsory nature of public schooling.

The court also held that classifications that unequally burden the poor are constitutionally suspect when an interest as vital as education lies in the balance. Citing cases which struck down wealth requirements with respect to the criminal process, voting, interstate travel, and divorces, the court quite appropriately found that the poor were entitled to similar protection in relation to public schooling.

For this purpose, the court accepted the plaintiffs' allegation that there was indeed a strong correlation between poor districts and poor children. However, it further held that discrimination against children living in poor districts, even if they were not poor, constituted an equal protection violation. In so doing, the California Supreme Court firmly recognized the peculiarly weak and vulnerable position of all children, regardless of their race or socioeconomic status.

There are a number of important aspects of the *Serrano* decision which must be emphasized in order to avoid misunderstanding. First, *Serrano* emphatically is not a judicial attempt to redistribute wealth in this country; it does not hold that the pricing of all public and private goods, with the concomitant denials to those who cannot afford the price, is unconstitutional. The court is not redistributing Cadillacs and color televisions; rather it is drawing significant distinctions between public and private goods, finding that only in the former case does a constitutional issue arise. Further, and most significantly, the holding of the case applies only to public education, and the court specifically denies that its holding may be immediately extended to arguably less important state and municipal services.

Second, *Serrano* focuses on the operation of California's financing system in fact and does not dwell on the elusive search for a discriminatory motive. Nowhere in the California statutes does it expressly indicate that children living in poor districts must have less spent for their education. The court, however, is unconcerned by this omission. By delegating responsibility to local school districts to raise money for education, and by creating districts that vary widely in their capacity to do so, the State of California has sanctioned a revenue system that inevitably leads to a discriminatory result. Such a system, irrespective of its rationalizing principles, and notwithstanding the intentions of its creators, is inconsistent with the constitutional guarantee of equal protection under the laws.

Third, the *Serrano* decision is a basic reaffirmation of the Constitution's premise of ethical conduct. While children living in poor districts may profit academically from the infusion of added dollars, and while the taxpayers in these districts may be relieved of an unfair tax burden, such results are only byproducts—albeit important byproducts—of the essential purpose of the litigation. That is, the Supreme Court of California has removed the social injustice, the insult, of treating some children differentially in the allocation of public funds for education merely because they, or the district in which they live, happen to be poor.

Fourth, quite in contrast to the dire predictions in a number of newspaper articles commenting on *Serrano*, that decision does not mark the demise of decentralized decisionmaking in favor of a mindless equality. The Supreme Court of California has not mandated equal expenditures per child for every child in the State, nor has it intervened to fix political priorities with each community, deciding whether highways or schools or hospitals or police protection should be preferred. Rather judicial recognition has been given to the indisputable: Local control of education, as it is manifested with the existing structure, is a hoax. Poor districts do not choose to spend less for education, they do not value education less, they do not prefer other municipal services. Poor districts spend less on education because they are financially incapable of doing otherwise. Ironically, the districts which are willing to make the greatest sacrifices for the education of their children, a willingness evidenced by exorbitant property tax rates, are the very ones that are penalized under existing State policies.

Finally, while *Serrano* addresses itself primarily to discrimination against the poor in the meting out of education dollars, the beneficial effects of that decision reach far beyond poor and minority group students. Children of all races and income levels, living in both rural and urban communities, stand to benefit; for the California financing scheme not only preferred the wealthy but also, in part, randomly distributed education funds across the State. As the Supreme Court of California noted:

> The commercial and industrial property which augments a district's tax base, is distributed unevenly throughout the State. To allot more dollars to the children of one district than to those of another merely because of the fortuitous presence of such property, is to make the quality of a child's education dependent upon the location of private commercial and industrial establishments. Surely this is to rely on the most irrelevant of factors as the basis for education financing.

Simply stated, the fortuitous location of industry or the wealth of the neighborhood, like the frequency of sunspots or the incidence of blue-eyed children, has little relevance to the education needs and experiences of children. By rejecting these criteria as constitutionally impermissible, the *Serrano* court has begun a process which may ultimately render rational a funding mechanism which historically has been irrational. In any event, in the immediate future both poor and middle-income students attending public schools in poor districts will receive a more equitable share of the State's education resources.

Beyond the *Serrano* decision itself, it is appropriate to ask what is likely to take the place of the current financing plans which have been declared unconstitutional. How will State legislatures react? At the outset, the widespread judicial acceptance of the *Serrano* result will remove many of the bars to reform that have plagued State legislatures.

Powerful political groups representing the recipients of an invidious privilege have, in the past, successfully blocked the adoption of a school financing scheme that would achieve a more equitable distribution of education moneys. For example the Governors of Minnesota and Pennsylvania have proposed significant reforms which have not been acted upon by their respective legislatures. *Serrano* has broken

the logjam, and State legislative bodies are now free to explore a wide range of alternatives, subject to the constitutional limitation that they may not discriminate against the poor or children living in poor districts.

What funding scheme will be adopted? It is difficult to predict, but the value choices are endless: centralization or decentralization, diversity or uniformity, compensatory education or absolute equality. A legislature may choose to allocate funds on the basis of the characteristics of the consumers of the service, the children. Particular skills and handicaps thus may warrant additional funds. Such value preferences may include the educationally disadvantaged, the artistically talented, the physcially handicapped, or the emotionally disturbed child. On the other hand, a State legislature may decide to make education funds available on the basis of family characteristics. If the family is poor, their poverty could be treated as a shorthand for the greater educational needs of the children in the family. Indeed, as Professor Coons has suggested, the family could be designated as the administrative unit for purposes of receiving and expending education funds, or dollars could be allocated to school districts, employing the expressed preferences of the individual families in the district as the relevant criterion.

Another alternative for financing the public schools which could be adopted in the wake of *Serrano* is an assignment of funds based on the characteristics of each school district. Obviously, a wealth classification would be invalid, but such factors as the number of pupils, the number of schools, the willingness to make a tax effort to raise education dollars, and the degree of racial integration within the district could be considered. Extra dollars could be distributed to communities where the cost of providing educational services is appreciably higher because of high living costs. Also, urban communities could be compensated for the extraordinary burdens imposed on their fiscal resources by competing demands for such municipal services as welfare, street maintenance, and fire and police protection.

Local control is not hindered by any of these methods of funding schools. The formula for distributing dollars to districts is not dispositive as to the issue of how the funds will be spent. A familiar parallel may be drawn from Title I of the Elementary and Secondary Education Act, which allocates moneys under a formula based on the number of poor children, and which, nonetheless, finances services for all educationally deprived children living in eligible attendance areas. Thus the funding remedies which will flow from the *Serrano* decision are compatible with any legitimate State interest in local initiative and in the decentralization of authority. For example, under nearly all of the foregoing plans, the legislature could allow local school districts to make educational policy choices and to exercise broad discretion to fund and administer programs. Alternatevly, the State could require or recommend that districts fund specific programs and projects such as bilingual education classes, special education classes, science laboratories, kindergarten classes, or cafeterias.

The State could also compel local school districts to make direct financial payments to families, thereby enabling them to purchase educational services at both public and private schools. The most likely legislative response, in effect a reaffirmation of current policies, would be to maintain a mixed system under which a portion of a district's budget would be devoted to State-mandated programs and the balance to locally initiated programs.

In view of its substantial, if not increasing, contribution to local and State school budgets, what should be the response of the Federal Government to *Serrano*? At a minimum, Federal education statutes should not attempt to undo the *Serrano* result by allocating funds under formulas that increase rather than narrow the disparities between rich and poor districts. Public Law 874, which allocates funds on the basis of the number of residents who live or work on Federal land, often has precisely that impact, and it should be amended to take into account the wealth of the recipient districts. A further step would be to strengthen the formula for allocating Title I funds so that districts with low concentrations of poor children would no longer be eligible for assistance under that act. Finally, if the Congress and the Executive are serious in their efforts to diminish interdistrict resource disparities and to provide compensatory services to the educationally deprived, district wealth equalization should be made a prerequisite to the imposition of Federal funds. Under present practices, federally funded services are labeled compensatory or supplementary in poor districts, even though those services are readily available from local resources in wealthier districts. Such practices are destructive of the congressional purpose in enacting the Elementary and Secondary Education Act.

Once education resources have been distributed equitably among districts, there still remains a great deal to be done; for the poor, notwithstanding the *Serrano* decision, still may not receive their fair share. Indeed, there is mounting evidence that school districts allocate fewer dollars to schools in poor and black neighborhoods. Lawsuits challenging intradistrict spending policies have been filed in a number of cities, and in a recent decision in the District of Columbia, *Hobson* v. *Hansen,* a Federal district court reaffirmed its earlier holding that such invidious discriminations between rich and poor, and black and white, violate the 14th amendment of the U.S. Constitution. Thus far, the Federal Government has wavered in its support of these efforts. In February, 1970, James Allen, then U.S. Commissioner of Education, issued guidelines to chief State school officers requiring that local funds be allocated equally between schools in rich and poor neighborhoods as a condition of eligibility for Federal Title I funds. The Congress swiftly reacted, and in April, 1970, these so-called "comparability" guidelines were suspended for a period of 2 years. Since this congressional action, the U.S. Office of Education has done little either to encourage districts to equalize expenditures voluntarily or to prepare for the period beyond the 2-year suspension. If the *Serrano* decision is not to be emasculated at the district level, it is imperative that the Congress reconsider its earlier action and amend the Elementary and Secondary Education Act to require local school districts to establish a basic comparability between schools, and that the Office of Education aggressively and conscientiously enforce that policy.

As a final note, *Serrano* v. *Priest* represents a timely and ambitious judicial effort to resolve one of the many crises in American education: it is not, however, in any sense, a general solution. Mere infusions of dollars will not insure a creative and stimulating school environment, or nourish a healthy diversity in education offerings, or dispel the fear and paranoiac concern for order and silence which pervade the public schools. Nor will such dollars be immediately translatable into programs which will raise the achievement levels of the educationally disadvantaged, or the non-English speaking, or the physically or mentally handicapped; for, in truth, we know precious little about the workings of the educational process. What is needed is qualitative as well as quantitative reform. In short, what is needed is innovation and experimentation. If the financial burdens of supporting the present school system or the attitudes of local school administrators make locally supported innovation and experimentation unlikely, as I believe they do, then the Federal Government, through the U.S. Office of Education, should take the initiative. The Office of Education should be at the center of the movement for improving the quality of American education, and not merely a conduit for providing more of the same—and not much more.

Senator MONDALE. Thank you very much. I appreciate that most useful statement.

Mrs. Carey?

STATEMENT OF MRS. SARAH CAREY, ASSISTANT DIRECTOR, LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Mrs. CAREY. Thank you. My point of view in discussing the *Serrano* decision is that of an organization that has been coordinating and stimulating similar kinds of lawsuits around the country, and in many cases being involved in litigation ourselves.

I think at the outset I should state that the impact of *Serrano* has been absolutely phenomenal. In a way that far exceeds the limited nature of the decision. It is, as the professors have pointed out, a decision of the California Supreme Court, not the U.S. Supreme Court. It will apply to California only if it passes a whole series of remaining judicial proceedings.

Yet, despite these various restrictions, it has had at least as much impact, if not more, than a number of the major U.S. Supreme Court decisions in past years.

I think, trying to explain the reaction—you have touched on it earlier, Senator—that the whole spirit of this Nation has been that

we are committed to a universal, equal form of education that helps all children, poor or rich. And then, suddenly we find out through this decision and the resultant publicity that, in fact, we are not doing that; we are providing education resources very much along class lines and discriminating against those who need it the most.

That is just a preface.

The *Serrano* decision has been a real mindblower in terms of the issues it has raised and the activity it has provoked, legislative and legal.

Similar Suits Filed in 26 States

At our latest count, we figured that something like 43 attorneys in 26 States have either filed or are planning to file similar kinds of lawsuits. There is a great danger, as Professor Coons has mentioned, that some of these suits will not be adequately prepared and could prejudice the consideration of the issues by the Supreme Court.

Senator Mondale. There is a conference scheduled on October 16.

Mrs. Carey. That is a conference the lawyers committee is sponsoring, and we are trying to pull together——

Senator Mondale. In Washington.

Mrs. Carey. That is right. But, as you probably know, lawyers are difficult to control. They hide behind their clients.

Senator Mondale. I was once a lawyer myself.

Mrs. Carey. I would like to point out that our feeling is that the *Serrano* case has raised more questions than it has answered. It is very exciting in that respect, in terms of ushering in an era of reform that will challenge the educational establishment.

Many of the questions that it raises are touched upon by the other suits that are now pending. I would like to just briefly summarize these questions, and then run through the three major categories of lawsuits that are now pending, so you have an idea of some of the issues being presented.

Three Major Questions Raised

Serrano set a negative standard. It did not say what the State had to do. It just said what it could not do; and, in so doing, it raised a number of very complicated questions, including what ought to be done about the property tax.

The decision does not invalidate the property tax, but it requires that if that tax is to be retained, the distribution of the income generated by it must be reformed. This probably cannot be done unless the manner in which the tax is collected is also reformed.

The second major question is: Should school districts be redrawn? The *Serrano* decision indicates that as long as the inequalities in resource allocation among districts are corrected, there is no need to alter present district boundaries.

Senator Mondale. It could well be that that judgment, if sustained, would have a bearing politically in the long run about how school district lines are drawn.

Mrs. Carey. That is right. In a number of cases now pending, the plaintiffs request redistricting as a means of sharing the wealth among various units of government.

The third one is—well, I guess, Professor Yudof has really taken care of this issue—how can intradistrict discrimination be prevented, once

the money gets handed down by the State, assuming the State corrects its allocation pattern?

And then finally—and this is an issue the press has ignored totally—if education is a fundamental interest, as the *Serrano* court declared it to be, what flows from that?

In the criminal area, where the right to an adequate defense, has been declared a fundamental right, the Supreme Court has held that the State has to put the defendant in a position where he can actually fully exercise that right. This has been translated to mean if he is poor he must be furnished defense counsel; his trial transcript must be paid for; and he must be given other support to put him in an equal position with more well-to-do citizens.

Serrano Decision Deals with Fiscal Equity

Senator Mondale. As I understand Dr. Coons' interpretation of the *Serrano* case, the court specifically was not asked to deal with the question of need; they were asked to deal with the question of what he calls "fiscal equity." So in no way does that deal with the need question. But there have been two cases, in Virginia and Illinois which sought to deal with the fairness principle, the need principle and both were lost.

Mrs. Carey. I am getting at it from a different way. The *Serrano* decision did declare education to be a fundamental interest, and it said, as a result of that, we have to do certain things with the way we spend money for education, But there are a whole lot of things in different directions that flow from the finding of fundamental interest.

In other lawsuits which raise the point directly—which this case didn't—it may well be that you will find fundamental interest interpreted as requiring whatever kinds of support a student needs to exercise that interest, the same way a criminal defendant may need counsel. The student may need transportation, he may need lunches, or special instructional aids.

Senator Mondale. I understood Dr. Coons to say he hopes no one would bring a lawsuit of that kind now.

Did I understand you correctly?

Dr. Coons. Yes, sir.

Mrs. Carey. Dr. Coons does not want to have *Serrano* fouled up on its way to the Supreme Court.

Senator Mondale. That is going to be quite a conference in October.

Mrs. Carey. Ultimately, 5 or 10 years down the road, there will be cases that flow from the fundamental interest interpretation just as there have been in the voting rights and criminal defense areas.

To get a little more specific on these questions, I would like to outline the kinds of cases that are now pending.

Questions on Property Tax

In the property tax area, there are a number of suits, a whole line of new law, that in effect are challenging the way jurisdictions assess and administrate their property taxes. As you probably know, nationwide around half of school funds are funded through the property tax. The tax generates $33 billion, which makes it second only to the Federal income tax and the Social Security tax. And yet, the

manner in which it is administered in most States is an outrage. It is steeped in corruption and subject to tremendous political abuse.

Even though State constitutions generally define the level of required assessment, this varies tremendously locally, so even though a State may require in its constitution assessment at full market value, the local assessors will be assessing anywhere from 5 to 10, to 25 percent of value.

Many States—and Illinois, Indiana, and Wisconsin are among the worst—have such a proliferation of assessing districts, with elected assessors who are untrained and unscrutinized and unreviewed by State agencies that they are literally tied into the local political system which negates effective assessment. Further, the number of tax exemptions granted have gone way out of control.

In Boston and in other major cities where the exempt private and public property cuts severely into potential tax bases—the loss that results from this maladministration of property taxes hits the schools the hardest, although it affects other local services.

The National League of Cities and the U.S. Conference of Mayors has estimated that maladministration of the property tax costs the cities between 30 and 50 percent of their total potential revenues.

This could mean that—in a city like Newark, the loss through the city's failure to administer the property tax properly is greater than the funds it gets through Title I, ESEA. So the Federal program, in effect, is merely making a dent in the misfeasance of local officials.

In regard to the cases that are pending, there is a major case in Texas involving as plaintiffs the school districts of Fort Worth, Dallas, and Houston. These school districts are claiming that the manner in which Texas assesses taxes is so divergent, from district to district, that they are being assessed at three or four times the amount of neighboring districts—which are being assessed below the statutory level. That, since the State contribution to the local schools depends on the value of the property assessment in the district, they are getting hit on the other end, too. More is being taken from them and less being given back as a result of the way their properties are being assessed.

They also claim that the tax exemptions from State and Federal buildings in their jurisdictions—and these are facilities which benefit the State as a whole and not just the locality—also cut unfairly into their revenues and discriminate against them by imposing a higher tax burden.

The Fort Worth case is before a three-judge Federal court in Texas and has survived a motion to dismiss; presumably it will be decided sometime this fall. It points up very directly the second phase of the *Serrano* effort. A State may take the step that California appears to be taking, of cleaning up the manner in which it distributes its revenues once they have been collected, but, unless it also cleans up the way in which the revenues are collected, it will be hit by a second equal protection suit down the road.

This summer in June a Federal court in Alabama considered a similar issue. Schoolchildren in that case claimed that inequities in the administration of the property tax—from 6 percent of market value to 26 percent of market value—deprived them of much needed resources for their school. In other words, because the State assessors were not following the statutory level of 100 percent, they were, in

effect, cutting into the school budget by several million dollars. This was the first case to hold that under the Federal Constitution that kind of divergence in the administration of property tax violates both the due process and the equal protection clauses.

The property tax reform effort is a movement that must be watched. It is really another part of the kind of thing *Serrano* is trying to accomplish.

Questions on Effects of Revenue Sharing

I think without going into it too specifically that there is clearly a Federal role in this area. If the Federal Government is going to accept some form of revenue sharing, then the funds generated under that program should not be handed out unless the States are willing to clean up their own tax mess, and, in effect, reform the property tax and other laws that generate taxes.

As I understand it, neither S. 1669 or H.R. 7796, the special revenue-sharing bills for education, includes any such provisions at present.

Suits Seeking Redistricting

A second line of cases, which is of tremendous relevance to where we go in education and what happens with school finances, are the suits that are seeking redistricting. These suits have two goals. Some of them have a fiscal goal. The plaintiffs are asking that their school district be merged with a richer neighboring district in order to share the wealth. These suits have a second goal sometimes, the separate, distinct goal of seeking desegregation of what have become racially segregated districts.

While *Serrano* promises to eliminate economic distinctions between rich and poor districts, this line of cases seeks to redraw district lines altogether, so you can merge rich white communities with poor minority communities. As far as school reform movement is concerned, it seems clear these suits can only provide a temporary form of relief; sooner or later there is going to have to be an overhaul of the State laws to provide for a greater State contribution. But in the short run the suits may help integrate the poorer school districts with their richer neighbors and get some additional funding into them.

To touch on the cases briefly, one of them is pending in Federal court in Texas: *Rodriguez* v. *San Antonio Independent School District*. In the San Antonio area, the school districts have been drawn with great skill so the Chicanos are in one area and the whites are in another. The suit alleges that the higher the white population, the more money available. They are asking for alternative relief, either a correction of the fiscal distribution at the State level, or redistricting so that the Edgewood School District, in which the plaintiffs live, would be merged with a nearby richer district.

Senator Mondale. I think they have something like 12 school districts within the city of San Antonio, each separately funded. And, in addition, the city fathers put all the public housing in the Edgewood School District. They are located next to an Air Force base. The children all go by Edgewood, they go somewhere else with their impact aid. The superintendent of Edgewood testified before us.

Mrs. Carey. The San Antonio case is probably one of the worst ones. But it is clear the power to develop school districts has been greatly

abused, in the same way zoning laws have been exercised to exclude poverty sectors or predominantly minority sectors.

A second case that is presently pending is the one in Richmond, Va., which I am sure everyone has read about. This is a case that follows an initial order from a Federal court ordering the city of Richmond to desegregate its schools. The plaintiffs came back a few years later and said, "Court, we cannot desegregrate; the only way we can effectively integrate is by merging with the counties." The courts brought in the surrounding counties as defendants and is presently considering a metropolitan redistricting scheme. The *Richmond* case alleged both racial discrimination and the discriminatory exercise of State districting powers which resulted in the distribution of school resources of an unequal basis. There are several similar suits, one in New Jersey, *Robinson* v. *Cahill*.

There is one pending in Hartford, Conn., *Lumpkin* v. *Dempsey*, where the city of Hartford is claiming the only way you can integrate education is by reaching into the surrounding counties.

In Wilmington, Del., and Grand Rapids, Mich., there are suits similar to the *Richmond* suit, where an initial desegregation order was granted, and the plaintiffs came back for further relief, saying it is impossible to desegregate unless we join the surrounding areas as defendants.

Senator MONDALE. Do you think those cases are likely to be successful, in the absence of evidence of discrimination and segregation in the development of the lines themselves?

Mrs. CAREY. That is the issue that is being litigated, whether or not there was discrimination in the drawing of those lines. Of course, the *Detroit* case, from what the press says—which may or may not be accurate—seemed to find there was State action in the zoning practices and the way that resources were allocated.

Senator MONDALE. Within the district?

METROPOLITAN DESEGREGATION CASES

Mrs. CAREY. Within the city. But also suggesting the only way—the State has the power in the entire metropolitan area, naturally, since it controls cities and can take away their powers and give them additional power. But that court seemed to be saying that the State is responsible because the situation resulted from the delegation of its zoning and financing powers.

The metropolitan desegregation cases, which are also growing in number very rapidly, raise important questions that relate to *Serrano*.

Among these are—and these are questions, I think, the committee should consider—have the States overdelegated their districting powers in such a manner as to become unwitting accomplices to local discrimination? Can the districting mess be cleared up by a simple reallocation of resources? Will the *Serrano* principle, with its elimination of economic distinctions between districts encourage in areas of de facto racial segregation a system of separate but equal schools, in effect ignoring the principles enunciated 15 years ago in *Brown* v. *Board of Education*? Can the schools be equal if they are racially segregated? And, finally, will the remedies fashioned on the basis of *Serrano* include integrated classrooms as part of the definition of "equalization of resources"?

These are all questions way down the road. But, in the two lines of cases, each take care of only part of the problems. *Serrano* really does only get at the fiscal problem, and the metropolitan desegregation ones get at the racial issues. It would seem, unless the two are combined in some manner, we are not going to fulfill our constitutional principles.

Some of the language in the first *Hobson* decision, I think, illustrates the problem that *Serrano* could lead to, of separate but equal schools where you would make funding, the allocation of funding sufficiently equal to meet the constitutional standard, and yet the communities would still remain segregated.

The final line of cases I wanted to touch upon very briefly are the remaining school cases which more or less seek the same goals as *Serrano*. Professor Yudof has already touched on the intracity suits, and there is one in Chicago, one about to be filed in San Francisco, and another about to be filed in New York. Intracity discrimination is, again, a pattern across the country. These cases all reflect very real personal situations.

Relationship of Wealth to Educational Achievement

There are, among the post-*Serrano* cases, cases that are going a bit further in terms of raising additional related issues. The case filed initially by the Detroit School Board, which was dropped—and which we understand is about to be reinstituted—attempted to deal with one of the questions raised by *Serrano*, which is the relationship, if any, that wealth has to actual educational achievement.

I think many of the journalists raised this question. If you keep on increasing the money, can you really make a difference in education? Aren't these children so disadvantaged that pouring more money isn't going to make any difference?

Well, the *Detroit* case tries—through a massive study based on Michigan school data—to show that there are very direct correlations between the resources provided to a school, the background of the children, and educational achievement. There are figures showing that educational achievement does at least correlate with the money invested. And, finally, the study shows the relationship of all of this to career opportunities. As we understand it, this case is going to attempt to bring to proof——

Senator Mondale. Where is that case? Did I understand from your testimony that the plainstiff's case in Michigan was dropped?

Mrs. Carey. It was dismissed for lack of prosecution, but it is going to be reinstated.

Senator Mondale. This is the Urban Coalition case?

Mrs. Carey. It is the case for which the Urban Coalition did a study.

Senator Mondale. Yes, I read the study. I thought it was going forward. I was surprised to hear it had been dropped.

Mrs. Carey. Detroit got so involved in other issues that the school board did not pursue it.

But these suits are going to be moving into some of these areas of proof that raise still more questions.

Based on this background, I would like to suggest a number of actions that the Federal Government should consider.

There is, from our point of view, a tremendous need of research and hard data on which to base the various remedies that are being recommended. Such questions as the cost of municipal overburden, the differentials between city and suburban areas, are not too difficult to answer. The ACIR has taken care of a lot of that. But there are very basic questions about the real costs of educating children that nobody knows about, and perhaps if the Office of Education could develop a 5- or 10-year research plan that could direct itself to this problem, it would help the results of these cases.

Senator MONDALE. I agree that we ought to have a much better and more sophisticated program of research and experimentation. But I think, if we have a 10-year plan, the Congress would await the results of that study before it helped schoolchildren. There would be one more generation down the drain.

NEED LONG-TERM COMMITMENT

Mrs. CAREY. Some form of long-term commitment. The performance contracts, for example, that some cities are turning to really should be watched closely from the Federal level so that other States can benefit from them if they actually work.

Senator MONDALE. I agree with you.

Mrs. CAREY. The present measurements are also focused so much on the speed, on the efficiency with which the child is moved, through the system rather than the end result, the learning.

As I think has been touched upon by the professors, I think that a lot of things ought to be done about Title I.

If the *Serrano* movement really takes fire and the legislative renaissance that Professor Coons has predicted takes place, there is clearly going to be a gap period between the time when the States assume their responsibilities and the present. During that time Title I really should be used to help make up the differences in the needs of poor students in the inner city.

Beyond that, if the States do really correct their financing schemes, Title I should probably be used as a source of funds for continuing experimentation with regard to the educational needs of the poor.

An additional action that we have kicked around that might be useful at some point—would be some kind of special Federal legislation that would give individuals the right to serve as enforcement tools in seeing that the States comply with the equal allocation of resources requirement. We felt perhaps something along the lines of the Voting Rights Act, that would put in the office of the Attorney General and in the hands of private individuals a right to enforce compliance with the constitutional standards established by *Serrano*. I think that is quite a way down the road, but those kinds of enforcement efforts, where you allow private individuals to do what the Federal Government may not do, even though it is its duty, are really tremendously helpful in moving in this kind of area.

One final comment. We have found in following these suits that many of them are outrageously expensive. Reform litigation, particularly litigation that is massive, can be extraordinarily expensive. Legislative action is far more efficient, less patchwork, and really can do the job faster.

Just to give you a specific example, the suit that was brought in the District of Columbia to enforce the initial decision in the *Hobson* case, that is, the followup suit, has cost, if you include attorneys' fees, somewhere around $200,000 to $300,000 for the appellants alone. So that is something that must be kept in mind. Marvelous as the constitutional issues are for lawyers, they are almost prohibitively expensive.

PREPARED STATEMENT OF SARAH C. CAREY

My name is Sarah Carey. I am an attorney presently serving as the assistant director of the Lawyers' Committee for Civil Rights Under Law. I am pleased to accept the invitation of the Select Committee to discuss the nationwide implications of the California Supreme Court decision in *Serrano* v. *Priest*.

The *Serrano* decision shocked the Nation by demonstrating that the present methods by which it finances public school education represent, in effect, an abandonment of the historical national commitment to universal, equitable education for all children. The court's decision showed that poor children, those who depend the most on public education as the means of gaining full participation in the economy and the society as a whole, are being provided educational resources substantially inferior to those provided the children of the rich.

California is not an exception. The laws which guide the distribution of education resources in the States today are out-of-date and grossly inequitable. The States have designated local school districts, a hodge-podge of self-created and irrationally constituted jurisdictions, as the basic financing units. Each unit is responsible for raising over half of its school resources through a tax levied on property, thereby tieing school finances to local wealth. The remaining funds are provided through State "equalizing" grants which fail to take account of spiraling school costs and shifting property values.

These grants no longer equalize and in some States they even help to reinforce the disparities between rich and poor districts. The result is that in almost every State in the Union there is a wide disparity of resources available to local districts which bears no relationship to local tax effort, cost levels or educational needs. In some depressed urban and rural sections of the country, the resources available for the schools are so inadequate that public education—as it is known in the rest of the State—is denied.

The *Serrano* decision is the first successful decision to emerge from a national law reform effort that has sought in a dozen or more States to invalidate the school finance laws on the grounds that they discriminate against the poor and minorities. Over the past 3½ years, an increasing number of these suits have sought to bring an end to this blatant form of discrimination. Parents, schoolchildren, and school boards themselves have sought to achieve through the courts the relief that the State legislatures have persistently denied them.

The Lawyers' Committee has for several years supported and helped coordinate these efforts to achieve judicial reform. The committee plans to continue this role over the next few years in the hope that the gains achieved by the *Serrano* decision can be given national scope. On the basis of our experience to date, I would like to summarize the issues raised and the goals supported by these cases and to relate them to the *Serrano* holding.

The Decision in Serrano

The law of the *Serrano* case at present applies only to the State of California and even there, will become binding only after additional judicial proceedings have been completed. The decision holds that under the equal protection clause of the 14th amendment to the U.S. Constitution (as well as the California constitution) education is a fundamental interest; and it forbids a State school finance system that bases the amount of money allocated to the schools on the wealth of the district in which the schools are located. It does not mandate any specific way of financing schools; it simply states what a finance scheme may not do. The decision, in effect, raises a host of complex questions, opening the door to a broad range of reforms. Among the important questions raised are:

What should be done about the property tax? The decision does not invalidate the property tax. But, it requires that if the property tax is retained, the distribution of the income generated by the tax must be made more equitable. This goal cannot be effectively achieved, unless present inequities in the assessment and collection of the property tax are corrected. Those localities where the tax is administered fairly and at full statutory requirements will

have a right to claim that they have been discriminated against, in favor of localities where the assessment process is grossly below statutory requirements.

Should school districts be redrawn? *Serrano* states that present school districts can be retained as long as the inequalities in resource allocation among them are corrected. If the present irrational patchwork of districts is retained—often reflecting local decision to exclude the poor and minorities—it will be difficult to achieve an equitable redistribution of resources. One way of getting rid of these inequities would be to redraw district lines to combine poor areas with more well-to-do areas. A limited number of larger units would not only provide a better mix of resources, but would also create a better scheme for administration of the property tax.

How can intradistrict discrimination to the poor be prevented? If the State is compelled to equalize its resource allocations among school districts, there is nothing to prevent the districts from favoring white or well to do neighborhoods in their distribution of funds. In fact, such discrimination, notwithstanding the recently issued Title I comparability regulations, occurs in most major cities in the country.

If education is a "fundamental interest" as the Serrano court declared it to be, what does this mean? In the criminal law, where the right to a fair defense has been held to be a fundamental right, the Supreme Court has held that the State must put the defendant in a position where he can fully exercise that right. If he is poor, he must be furnished defense counsel, his trial transcript must be paid for, etc. Does this mean in the field of education that poor students must be given the extra resources needed to provide a real equal educational opportunity? If so, what are those resources? Would they include transportation to school, meals during the schoolday, special instructional programs to overcome their "disadvantaged" backgrounds, etc.?

The many lawsuits seeking to bring *Serrano*-type reform to other States are posing these questions and, in their demands for relief, suggesting some of the answers.

THE PROPERTY TAX SUITS

Over half of school funds, whether State or local, are raised through taxes levied on business, real, and personal property. Nationwide the tax generates $33 billion, second only to the Federal income and social security levies. In most States, the manner in which this tax is administered is an outrage. Even though State constitutions generally prescribe the level at which property is to be assessed (33 percent of market value, 100 percent of market value, etc.) there are wide disparities in local assessment rates. Many States are divided into a multiplicity of assessing districts (1,424 in Illinois, 1,009 in Indiana, and 1,834 in Wisconsin), each with its own assessor, who all too often is an untrained, elected official subject to local political pressures. Many States have granted exemptions from the property tax to all kinds of organizations of dubious social usefulness;[1] others through the discretion of the local assessor grant substantial reductions to corporations of great wealth. The losses in revenue which result from these practices hit the schools the hardest (they also affect other services such as police and sanitation to a lesser degree).

Fair, honest administration of the property tax would increase the revenues of many school districts by many millions of dollars.[2] It would also increase the revenues available to the States for redistribution to local school districts.

In *Fort Worth Independent School District* v. *Edgar*, now pending before a three-judge Federal court in Texas, the Dallas, Fort Worth, and Houston school districts are challenging the present manner in which Texas collects property taxes for school purposes as well as the manner in which those taxes are redistributed by the State. The plaintiffs allege that they contribute more than their share to the State school fund because their property is assessed at full market value, while other districts are assessed at rates as low as 5 percent of market value. Since the State contribution to local districts increases as the district's assessed valuation declines, the complaining districts receive a smaller State contribution than do other districts where assessments are carried out improperly.[3] Fort Worth claims to have lost

[1] Many of the Nation's cities which are suffering the greatest fiscal decline have 30–50 percent of their property exempt.

[2] The National League of Cities—U.S. Conference of Mayors has estimated that maladministration of the property tax costs some cities 30, 40, or even 50 percent of their potential property tax revenue.

[3] The suit also includes a challenge to the formula which is used to determine the States contribution to local districts.

$2,632,878 in school year 1969–70, Dallas $5,395,487, and Houston $5,587,960. Similar losses will be incurred as long as the present scheme is maintained.

The suit also complains that tax exemptions to certain State and Federal properties that are located in the plaintiff districts but that serve the State as a whole impose undue tax burdens on plaintiffs. Plaintiffs seek an injunction to bar the State from "assessing and collecting taxes on any basis that is not equal and uniform" and from distributing the taxes "so assessed and collected . . . on any basis that is not equal and uniform."

The implications of the *Fort Worth* case to the *Serrano* decision are clear: a State that seeks to equalize local tax efforts, to require property-rich communities to provide increased contributions to a State school fund that will, in turn, be used to support property-poor communities, will face a second set of equal protection challenges unless at the same time it equalizes the manner in which its property taxes are assessed and collected. In fact, whether or not *Serrano* is upheld, a new line of legal decisions will, hopefully, require the States to clean up their property tax administration.

Russman v. *Luckett, et al.* (391 S.W. 2d 694), brought by taxpayers, schoolchildren and their parents held in 1965 that the practice of Kentucky assessors of varying assessments anywhere from 33 percent to 12–1 percent of market value, when the State constitution required full assessment was invalid and in clear violation of the Kentucky constitution. The court pointed out that not only did the assessment system deprive the school districts of direct revenues but it also affected their tax rates which under law were based in part on the assessed value of the property. Similar suits have been brought successfully in other States.

In the case of *Lee* v. *Boswell*, decided in June 1971, a Federal court (N.D. Ala.), held for the first time that inequities in the administration of the property tax laws which varied from 6.7 percent of fair market value to 26 percent[1] when the State constitution required assessment at full market value, violated the due process and equal protection clauses of the Federal Constitution. The court struck down as vague and lacking in standards, the provision in the Alabama code which allowed county officials to determine local assessment rates. It found that the practice under attack caused direct injury to businesses which were being taxed at the higher rates—and thereby suffered a loss of property—as well as to schoolchildren whose school districts received State assistance based on a fixed percentage of the State's property tax revenues. Underassessment, the children alleged, had seriously cut those revenues.

These cases demonstrate the importance of overall property tax reform to any restructuring of the school finance systems. They also suggest a number of ways in which the Federal Government might expedite that reform.

The most important step would probably be to condition any Federal revenue sharing that may be approved on reform of local property tax administration. The conditions should establish specific criteria such as: reduction of the number of assessing units (to meet federally established standards); appointment of assessors who meet special qualifications and receive periodic training; a strong State tax commission, capable of assessing complicated properties directly and overseeing local operations generally; frequent reassessments in areas where property values are in transition, etc. These requirements are particularly relevant to special revenue sharing for education. At present S. 1669 and H.R. 7796 simply combine the existing categorical grants for education into six main areas and require the State to develop a plan showing how the money will be spent. They do not impose any new requirements on the States.

Another step might be Federal assistance to localities in which major Federal tax-exempt installations are located. Professor Coons suggests that the Federal impact aid program which provides grants to school districts having a substantial number of children from families working on Federal installations, will no longer be necessary because such costs will be distributed statewide if "equalization of tax effort" is adopted.

Under his equalization formula, the cost of State tax exempt institutions which impose heavy burdens on the districts in which they are located will be similarly absorbed. It is important that some relief be proved to compensate districts for such State and Federal facilities whose benefits accrue to the entire State and

[1] The court found that urban areas tended to have higher assessment ratios than other areas of the State. If this pattern holds true in other States, it would mean that urban areas are doubly prejudiced: more money (proportionately) is taken from them than from richer areas because of maladministration of the property tax; and less is returned to them by the State because of unfair finance laws.

not just the local district. Another approach might be to transform impact aid from a system of grants to school districts into a system of grants to the States, available only to those States which have taken steps to equalize local tax base.

THE REDISTRICTING SUITS

The second important line of cases of relevance to the *Serrano* decision is the redistricting cases. State laws generally empower local areas to incorporate or otherwise constitute themselves as school districts. This power has been exercised in many urban areas to deliberately exclude poverty sectors, which would dilute the tax base and/or sectors in which racial minorities reside. A number of lawsuits have been filed to compel the States to exercise their districting powers on a more rational basis, and in a manner that will not prejudice the poor and minorities.

While the *Serrano* decision promises to eliminate the economic distinctions petween the poor and rich districts [5] this line of cases seeks to redraw district lines in a manner that will merge rich/white and poor/minority communities. The most likely benefit from these suits will be increased racial integration. As far as financing is concerned, they may provide temporary improvements for the poor school districts but they do not insure overall fiscal reform.

In *Bradly* v. *The Richmond School Board*, now pending in Federal court for the eastern district of Virginia, plaintiff schoolchildren and parents allege that the state school board has violated the equal protection clause of the 14th amendment by (a) exercising its districting powers to create a racially segregated school system and (b) by unfairly and without justification distributing educational facilities, school resources, school construction funds, etc. in a manner that fosters racial containment and provides preferential treatment to predominantly white schools. The requested relief is a merger of the predominantly white schools in Henrico and Chesterfield Counties with the predominantly black schools of the city of Richmond and the development of a plan of operation that distributes pupils, and educational resources equally. This suit follows an earlier court decision which held that the city was segregating its schoolchildren within its own boundary.

In *Rodriguez* v. *San Antonio Independent School District, et al.* (W. D. Texas) a Federal court is being asked to declare unconstitutional the system of school financing and districting in San Antonio and Bexar County Texas. Edgewood Independent School District, where the plaintiffs reside, is composed of 90 percent Mexican-American children. Despite a comparable tax effort, it spends $290 per year for each student, while neighboring Northeast Independent School District, a white district, spends approximately $475 per year. The plaintiffs allege that in the San Antonio area, where there is a multiplicity of local districts, "the lower the percentage of Mexican-Americans in a . . . school district, the higher are the expenditures per student." The plaintiffs ask for a reapportionment of school funds in a manner that will provide "substantially equal public school educational opportunities" for their district or alternatively, the abolition of present school boundaries and the drawing of new ones so that "the property values in each of the resulting school districts" will be "approximately equal with regard to the value of taxable property per schoolchild."

Other cases raising the question of redistricting include:

Robinson v. *Cahill* (pending in New Jersey State court) which asks that the State legislature be given a reasonable time to reapportion the school districts and that, the court make appropriate apportionment of State funds if the legislature fails to act (there are also charges of racial discrimination);

Lumpkin v. *Dempsey*, pending in Federal district court in Hartford, Conn., challenges the present State districting scheme which bases school district boundaries on local town boundaries with the result that the races are segregated.

Suits in both Wilmington, Del.; and Grand Rapids, Mich., have been filed to enforce earlier court desegregation orders. These recent suits seek further relief that would extend beyond metropolitan boundaries to include predominantly white counties.[6]

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[5] *Serrano* opens up two opportunities: the poor will be able to develop their own quality schools or, conceivably, the surrounding districts will receive enough support to absorb the additional costs of educating the poor.

[6] For more information on metropolitan desegregation suits, contact the Center for National Policy Review, Catholic University Law School, Fourth and Michigan Avenues, NE; Phone 202—832-8525.

> In Detroit, Mich., a decision was handed down in Federal court yesterday which found that the city schools were segregated as a result of State laws and private practices. The judge stated that merger with surrpunding suburban districts would be considered in drawing up a relief order.

These cases which are being filed with increasing frequency raise questions that have important implications for the issues presented in the *Serrano* decision. These questions merit close scrutiny by this committee. For example: have the States "overdelegated" districting power in such a manner as to become unwitting accomplices to local discrimination; can the districting mess be cleared up by a simple reallocation of resources; will the *Serrano* principle, with its elimination of economic distinctions between districts encourage in areas of *de facto* racial segregation a system of "separate but equal schools," in effect ignoring the principles enunciated 15 years ago in *Brown* v. *Board of Education;* can the schools be equal if they are racially segregated; and finally will the remedies fashioned on the basis of *Serrano* include integrated classrooms as part of the definition of "equalization of resources."

In summary, the school finance cases, as presently formulated only get at part of the problem: resource allocation. The districting cases get at a second part: racial segregation. Only when and if the two are combined will we fulfill our national commitment to a free, equitable system of public education.

THE OTHER SCHOOL FINANCE CASES

In addition to the property tax reform and redistricting cases, several dozen lawsuits are pending or about to be filed in Federal and State courts to obtain resource allocation relief similar to that sought in *Serrano.* (See attached table of currently pending, recently filed, and contemplated lawsuits).

Two finance reform cases have been dismissed in lower Federal courts and affirmed *per curiam* by the U.S. Supreme Court. *McInnis* v. *Olgilvie* brought by Chicago parents and schoolchildren was so decided in 1968 and *Burruss* v. *Wilkerson,* a suit from rural Virginia, met the same fate in 1969. Both of these cases requested relief which the courts found to be judicially unenforceable. The sought a redistribution of educational resources based on educational need without suggesting how that need should be determined. *Serrano* proposed a much simpler, more manageable constitutional standard that simply proscribed the dependence of school resources on local wealth.

The post-*Serrano* cases raise a variety of issues and rely on a diversity of legal arguments. There is no need to deal with those which simply apply *Serrano* to a different setting. Two cases, however, deserve special mention. The first, brought by the Board of Education of the city of Detroit against the State of Michigan (a case which was dismissed for lack of prosecution but which is about to be reinstated) raises in the complaint the problems experienced by the city because of the higher costs which it incurs in meeting both the educational and other municipal needs of its residents, compared to the costs in less urban areas.[7] For education, these include material costs and salary differentials as well as the added costs that are incurred when a school system is dealing with disadvantaged children who come from backgrounds that are often hostile to educational goals. Attorneys in the case are prepared to demonstrate the latter costs and to prove that unless they are met, the children of the poor will be deprived of their right to education.

Based on a study funded by the National Urban Coalition, the plaintiffs also deal with the relationship between educational expenditures and ultimate educational achievement, an issue that has been brushed over or assumed in most of the other cases to date. The data collected in the study demonstrate direct correlations between the income levels of students, the resource allocated to their schools (the poor get less), their educational achievements and, finally their career opportunities. This suit could help to answer the question raised by *Serrano* as to whether increased resource allocations will make any difference in educational achievements. It could also help to further delineate the concept of equal educational opportunity.

The second suit, *Brown* v. *Board of Education,* a Lawyers' Committee suit presently pending in Chicago, challenges the manner in which that city distributes its school funds among rich and poor schools. Like the *Hobson* v. *Hansen* case pertaining to the District of Columbia, the *Brown* suit attacks intracity discrimination, both in districting patterns and in the allocation of resources. It alleges that

[7] For a rough picture of how municipal and educational expenditures for core cities differ from nearby suburban municipalities, the Lawyers Committee has prepared a random comparison of three major cities (Baltimore, Boston, and St. Louis) with their suburbs. A copy of the comparison is attached.

the poorer, minority districts have systematically been given fewer resources. I mention this case only to point out that unless both lines of reform are pursued, the *Serrano* victory may not reach its intended beneficiaries in the urban areas. Similar suits are being prepared in New York City, San Francisco and other cities.

The Federal Response

The Nation is faced with an unprecedented opportunity to reform its public school system. The fulfillment of that opportunity can be greatly expedited if the Federal Government is willing to play an active leadership role. I would like to suggest a few of the forms that that role might take:

1. There is a great need for research and data to form the basis for the various remedies that are being demanded in the school finance cases. Most of these cases will require State legislatures to move in virtually unchartered waters. For example, most people agree that equalizing educational resources will require not simply an equal dollar allotment per school district, but an allotment that reflects local costs and the varying demands on the local dollar as well as the actual cost of educating various groups of children. The former factor can be computed without too much difficulty. However, no one at present knows the cost of educating children—that is actually teaching them to read, write, et cetera, as opposed to simply processing them through the school system.

The Office of Education should develop studies directed to this issue and should assess the effectiveness of performance contracts and other innovations now being adopted by some school systems to relate teacher salaries to the learning progress of the children. A 10-year plan of research and development is needed to both find new methods for educating the disadvantaged child and at the same time, to relate those methods to dollar outlays.

Research should also be directed to such items as: The relative merits of school finance reforms that have already been proposed and/or adopted; the relationship between centralization of financing and decentralization of control, the effectiveness of geographically large school districts in comparison to a multiplicity of smaller districts—and other similar questions that are raised by the *Serrano* decision.

2. Special aid to the schools attended by the disadvantaged should be provided by a greatly enlarged Title I ESEA program, at least until the States restructure their financing schemes to provide sufficient resources to meet the special educational needs of the poor. Beyond that point, (if it ever occurs) Title I should be relied upon as a continuous source of funds for research and development of new ways for meeting the educational needs of the poor.[8]

Finally, if Title I is substantially enlarged as we have recommended, the Congress should consider making funds available only to those States which take steps to reform their statewide school financing formulae to meet the *Serrano* standard. A phased scheduling should be developed recognizing the difficulties of achieving full fiscal reform.

3. The Congress should consider special Federal legislation that will give force to the constitutional ruling that education is a fundamental right in much the same way it gave force to the judicial decisions of the 1950's pertaining to the exercise of civil rights and to the decisions of the mid-1960's elevating the privilege of voting and participating in the political process to a fundamental right. Such legislation might grant a special private right of action in Federal court to challenge the conduct of State officials in their administration of laws pertaining to school finance. Or it might create rights running to private individuals in the enforcement of the new conditions that have been proposed above for Federal grant programs. In doing so it should provide for the recovery of attorney's fees to enable poor parents and taxpayers to fully exercise these rights.

Another approach would be to provide for Federal intervention to assure compliance with the constitutional standard in States where interdistrict disparities exceed a statutorily defined level—along the lines of the Voting Rights Act of 1965. As under that act the Attorney General could be required to review legislative enactments intended to achieve compliance and both private individuals and the Federal Government could have the right to enforce compliance.

[8] The present standards pertaining to "comparability" under Title I should be made at least as stringent as those developed by Judge Skelly Wright in *Hobson* v. *Hansen*.

The Congress should also consider the appropriateness of some form of Federal legislation to make up the striking differences between States of varying wealth in their capacity to support their public schools. This would make the Federal Government the final equalizer. Federal aid, however, should only be available to those States which have assumed a substantial portion of local educational costs and have progressive tax systems, meeting a statutorily defined level of tax effort.

4. Finally, the Congress should consider special "development" grants to States to assist them in redrafting their school finance laws and to help defray some of the additional costs that will be incurred during the transition from the present system of financing to the new system. These grants should be available to research the present system and design solutions (most States lack the legislative research and drafting resources that in California produced that data relief upon as the basis of the *Serrano* suit) as well as to assist with implementation.

This Nation has always claimed that its commitment to the future was demonstrated by its support to the public school system. If the pledge which that system represents to the Nation's children is to be fulfilled, we must openly admit that by distributing school resources along class lines, we have effectively denied the future to the children of the poor. And we must move as quickly and effectively as possible to give them the resources that will meet their educational needs.

MARYLAND

	Baltimore City		Baltimore County	
	Year, fiscal 1969	Year, fiscal 1970	Year, fiscal 1969	Year, fiscal 1970
Per pupil expenditures:				
Local	$413.00	$328.00	$526.00	$584.00
State	265.00	308.00	210.00	223.00
Federal	47.00	151.00	12.00	12.00
Total	725.00	787.00	748.00	819.00
Tax information:				
Assessed value/pup	16,491	16,398	20,976	20,848
Assessment ratio (percent)	56	56	50	50
Tax effort (in mills)				
Municipal overburden [1] (percent)		36		56.1
Demographic characteristics:				
Enrollment	192,169	193,082	123,607	129,658
Percent black	65.1	66.2	3.7	3.6

[1] School expenditures as a percent of total local budget.

MASSACHUSETTS

	Boston		Lexington	
	Year 1968–69	Year	Year 1968–69	Year
Per pupil expenditures:				
Local	$548.52		$763.26	
State	178.16		170.25	
Federal	95.57		33.42	
Total	822.25		966.93	
Tax information:				
Assessed value/pup	14,222		23,513	
Assessment ratio (percent)	84		88	
Tax effort (in mills)	[1] 28.69		36.26	
	[2] 24.15		[2] 31.75	
Municipal overburden [3] (percent)	23.4		64.3	
Demographic characteristics:				
Enrollment	95,713		9,604	
Percent black				

[1] Official.
[2] Equalized.
[3] School expenditures as a percent of total local budget.

COURT SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS

Case	Plaintiffs	Defendants	Claim	Remedy	Status
California, Los Angeles *Serrano Jr. et al. v. Priest et al.* • Another school finance case was filed in California (*Silva v. Atascadero*, San Francisco) but due to its similarity with the Los Angeles suit, the decision was made to drop its prosecution.	School children and parents from a number of Los Angeles County school districts.	Treasurer, Tax Collector, and Superintendent of Public Schools in the County of Los Angeles; the Treasurer, Controller, and Superintendent of Public Instruction of the State of California.	Plaintiffs claim that California's system of education finance violates the Equal Protection clause of State and Federal Constitutions. Plaintiffs allege that the finance system results in wide disparities between school districts in amounts of money available for per pupil expenditures, with consequent disparities in the quality and extent of educational opportunities, which are not justified in terms of varying educational needs. The plaintiffs allege that there is no reasonable relation between any educational objective or need, and use of school districts as units for differential allocations of educational funds or the part of the state finance scheme which permits each school district to retain and spend within that district all property tax collected there. Plaintiffs allege that as a result of the education financing scheme, they are required to pay a higher tax rate than taxpayers in many other districts in order to receive for their children the same or lesser educational opportunities.	Plaintiffs ask that defendants be ordered to reallocate the funds available for financial support of the school system, including funds from property taxes, and to restructure the finance scheme so as to provide equal educational opportunities for all children in the State and, if defendants and the legislature fail to act, that the court regulate collection of property taxes and apportion school funds in satisfaction of the obligation of the state constitution to maintain a system of free public schools and the equal protection clauses.	The case was dismissed in the lower State Court of California without any other opinion than a citation to *McInnis v. Ogilvie*. California's intermediate state court of appeals affirmed the dismissal, holding that (a) there was no cause of action stated under the equal protection clause of the 14th Amendment (citing *McInnis*, and stating that although not binding, since it was only summarily affirmed, *McInnis* nonetheless has "precedential value . . . entitled to great weight") and (b) no cause of action under the state constitution. The case has been appealed to the California Supreme Court; briefs have been filed; and oral arguments will be heard probably before January 1, 1971.
Florida *Hargrave et al. v. Kirk et al.*	Seventeen students of Florida's public schools and their parents who are also tax paying property owners. (The parents and children reside in sixteen of the State's sixty-seven counties.)	The State Board of Education (consisting of the Governor and his Cabinet), its Commissioner, and the State's comptroller.	The complaint charges that the State's "millage rollback" statute, which imposes a limit on the amount that counties can tax themselves for educational expenditures (a limit which previously was surpassable with local voter approval, and which in fact had been surpassed in numerous counties after gaining local voter approval), violates the Equal Protection clause of the U.S. Constitution, because the limitation is fixed by reference to a standard relating to the overall wealth of each county and not to its educational needs. Plaintiffs further allege that they cannot raise enough money to meet their educational needs under the statute, because, if they choose to raise locally an amount equal to or less than the statutory limit, they will not have enough funds (even with the State's foundation grant), and, if they try to raise locally the entire amount that they need, they cannot do so because their tax base is too low and the statute disqualifies them from receiving any State financial assistance from the foundation program.	Plaintiffs ask the court (a) to enjoin defendants from using the act of surpassing the statutory local limitation as grounds for withholding foundation grants, and (b) to declare the millage rollback statute null and void.	The case was dismissed by a single judge Federal district court. The Fifth Circuit U.S. Court of Appeals reversed the district court's jurisdictional rulings and remanded with directions to convene a three-judge district court. The three-judge district court on May 8, 1970 declared that the millage rollback statute is unconstitutional as a violation of Equal Protection and enjoined any withholding under the statute. The State has appealed the case to the U.S. Supreme Court; the appeal was accepted, and the case will be heard in the current term.
Illinois, Chicago *McInnis et al. v. Shapiro et al.* (subsequently *McInnis et al. v. Ogilvie et al.*)	High school and elementary school students attending school within four school districts of Cook County, Ill. and a corporate plaintiff, the Concerned Parents and People of the West Side.	Governor of the state, Superintendent of Public Instruction, the Treasurer, and the Auditor of Illinois.	Plaintiffs charge that the state acted unconstitutionally in creating an education finance system which results in plaintiff's school districts receiving per pupil expenditures "far below" those provided other districts. Plaintiffs further allege that as a direct result of the method of financing public education, there exist material disparities in the quality of educational programs, facilities, and services, and in the level of educational attainment achieved, in the different school districts.	Plaintiffs ask that various Illinois legislation which provides for and permits the distribution of monies "not based upon the educational needs of children" and resulting in unequal per pupil expenditures "be declared unconstitutional" and "a permanent injunction be granted."	A three-judge Federal district court dismissed the complaint for failure to state a cause of action and for nonjusticiability. The U.S. Supreme Court summarily affirmed the district court opinion without oral argument.
Michigan, Detroit *The Board of Education of The School District of the City of Detroit et al. v. The State of Michigan and Allison Green, its Treasurer.*	Detroit School Board, students and their parents.	State of Michigan and its Treasurer.	Plaintiffs allege that the finance system fails to allot the school districts in which they reside educational resources and educational opportunities substantially equal to those provided in many other school districts. Plaintiffs allege that the system is deficient in failing to relate to the district variations in educational needs, quality of existing educational facilities, and levels of educational costs and expenses (i.e., for school construction and salaries).	Plaintiffs ask that execution of the "State Aid Act" be enjoined, and that state funds be reapportioned so as to provide substantially equal education opportunities for all children in the state.	Suit was dismissed for lack of prosecution, but it will be amended and refiled shortly.
New Jersey, Jersey City• *Robinson et al. v. Cahill et al.* • A similar New Jersey complaint was prepared, focusing on the problems of Newark, but apparently no action was taken on it.	The Jersey City Mayor; members of the City Council, the Board of Education and the Board of Estimate; a student of the Jersey City public schools and the student's parent (who is also a resident of Jersey City); ten taxpayers from Jersey City's county and a single taxpayer from another county in New Jersey.	New Jersey's Governor, Treasurer, Attorney General, Commissioner of Education; the New Jersey Senate (and its president); the New Jersey General Assembly (and its speaker).	Plaintiffs charge in a 13 count complaint that the State's system for financing public education is unconstitutional; because it makes the quality of education depend on the wealth of each district and not the state; because it places an unequal tax burden on the property owner who lives in low property value districts; because the public officials in these poorer districts are unable to provide equal educational opportunity; because minimum educational needs are not being met; because the delegation to the districts to run the schools was done without adequate standards; because the schools are not being maintained thoroughly and efficiently as required by the State Constitution; because school district boundaries deprive plaintiffs of the power to spend what they want on education; and because the current system promotes racial discrimination.	Plaintiffs ask the Court, among other things, to declare the current educational finance scheme unconstitutional and to order the defendants to restructure the scheme in a manner not violative of the U.S. and New Jersey Constitutions. Further, they ask the Court to order the defendants to change the boundary lines of the districts in a way that will equalize the amount of tax base per student and that will eliminate the complained of discrimination. Finally, the plaintiffs ask the Court to declare that the State's real estate tax is unconstitutional to the extent it is used for public school support, and to direct the defendants to enact laws equalizing those taxes on a State-wide basis.	Filed in the lower State Court of New Jersey, January 1970.
Texas, Fort Worth, Dallas and Houston *Forth Worth Independent School District et al. v. Dr. J. W. Edgar, Commissioner of Education of the State of Texas et al.*	The school districts of Fort Worth, Dallas, and Houston and students and parents from each of these three districts.	The State Board of Education and its Commissioner.	Plaintiffs charge that the operation of the State's foundation plan is illegally and unconstitutionally exacting the amount of the local contribution from plaintiff school districts. The State's minimum foundation statute requires that the local contribution be calculated according to its taxpaying ability, and plaintiffs claim that their contribution has not been calculated in that manner, but rather, in a manner that is not uniform and which discriminates against them and which, therefore, violates both their rights to equal protection and to due process under the U.S. Constitution and their rights under the fundamental laws and Constitution of Texas.	Plaintiffs ask the Court to declare the manner by which local taxpaying ability is determined to be unconstitutional and to order the defendants to calculate uniformly local contributions to minimum foundation grants on the basis of each local district's taxpaying ability.	Filed in the U.S. District Court, Northern District of Texas, Fort Worth Division, February, 1970.
Virginia, Bath County *Burruss et al. v. Wilkerson et al.*	Students in public schools of Bath County; taxpayers in Bath County.	Public school and finance officials of the State of Virginia; Clerk of the House of Delegates of Virginia.	Plaintiffs are denied equal protection of the law by state laws creating substantial disparities in quality of, and facilities for, education provided in Bath County as compared to other areas of the state. Students and taxpayers of Bath County, where 46% of the residents earn less than $3,000 a year, request an end to educational discrimination related to their poverty. They allege that the education finance system discriminates against them by preventing them from the raising of local tax revenues adequate to provide minimal educational opportunity even while their tax rates are set at the legal ceiling. In addition, they allege discrimination in that the state's educational aid supplements are related to the locality's education spending from local tax sources, a factor actually *increasing* total education resources disparities between school districts. Plaintiffs further allege that the system fails to take into account the added costs necessary to provide substantially equal educational opportunities—buildings, equipment, teachers, books, curriculum—in their rural areas. They state that the Virginia legislature has not made positive attempts to deal with expenditure disparities within the state.	Plaintiffs ask the Court to declare the state formulae for apportionment of education monies unconstitutional and to retain jurisdiction of the action in order to give the legislature a reasonable time to reapportion funds in such a way as to meet equal protection requirements and to direct reapportioning if the legislature fails to act.	A three-judge federal court in the Western District of Virginia dismissed the case, citing the *McInnis v. Ogilvie* decision. The U.S. Supreme Court summarily affirmed the district court opinion.
Wisconsin, Racine *Bellow et al. v. the State of Wisconsin et al.*	Students in public school and their parents.	State of Wisconsin, its Treasurer, and the Superintendent of Public Instruction.	Plaintiffs allege that as a result of the delegation of the power to tax to various state subdivisions created without uniformity of tax base, and the manner of appropriation to the various divisions of sums of money in the state school fund, substantial disparities exist in the funds available to the public educational systems of the several school districts of the	Plaintiffs ask that the legislature be given reasonable time to reapportion school districts and that the court make appropriate apportionment of state funds if the legislature fails to act.	Filed in State Court (Dane County Circuit Court). Prosecution of the suit has been delayed indefinitely due to

Illinois, Chicago *McInnis et al. v. Shapiro et al.* (subsequently *McInnis et al. v. Ogilvie et al.*)	High school and elementary school students attending school within four school districts of Cook County, Ill. and a corporate plaintiff, the Concerned Parents and People of the West Side.	Governor of the state, Superintendent of Public Instruction, the Treasurer, and the Auditor of Illinois.	Plaintiffs charge that the state acted unconstitutionally in creating an [illegible] system which results in plaintiff's school districts receiving per pupil expenditures far below" those provided other districts. Plaintiffs further allege that as a direct result of the method of financing public education, there exist material disparities in the quality of educational programs, facilities, and services, and in the level of educational attainment achieved, in the different school districts.	[illegible] vides for and permits the distribution of monies "not based upon the educational needs of children" and resulting in unequal per pupil expenditures "be declared unconstitutional" and "a permanent injunction be granted."	trict court dismissed the complaint for failure to state a cause of action and for nonjusticiability. The U.S. Supreme Court summarily affirmed the district court opinion without oral argument.
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New Jersey, Jersey City* *Robinson et al. v. Cahill et al.* *A similar New Jersey complaint was prepared, focusing on the problems of Newark, but apparently no action was taken on it.	The Jersey City Mayor; members of the City Council, the Board of Education and the Board of Estimate; a student of the Jersey City public schools and the student's parent (who is also a resident of Jersey City); ten taxpayers from Jersey City's county and a single taxpayer from another county in New Jersey.	New Jersey's Governor, Treasurer, Attorney General, Commissioner of Education; the New Jersey Senate (and its president); the New Jersey General Assembly (and its speaker).	Plaintiffs charge in a 13 count complaint that the State's system for financing public education is unconstitutional; because it makes the quality of education depend on the wealth of each district and not the state; because it places an unequal tax burden on the property owner who lives in low property value districts; because the public officials in these poorer districts are unable to provide equal educational opportunity; because minimum educational needs are not being met; because the delegation to the districts to run the schools was done without adequate standards; because the schools are not being maintained thoroughly and efficiently as required by the State Constitution; because school district boundaries deprive plaintiffs of the power to spend what they want on education; and because the current system promotes racial discrimination.	Plaintiffs ask the Court, among other things, to declare the current educational finance scheme unconstitutional and to order the defendants to restructure the scheme in a manner not violative of the U.S. and New Jersey Constitutions. Further, they ask the Court to order the defendants to change the boundary lines of the districts in a way that will equalize the amount of tax base per student and that will eliminate the complained of discrimination. Finally, the plaintiffs ask the Court to declare that the State's real estate tax is unconstitutional to the extent it is used for public school support, and to direct the defendants to enact laws equalizing those taxes on a State-wide basis.	Filed in the lower State Court of New Jersey, January 1970.
Texas, Fort Worth, Dallas and Houston *Forth Worth Independent School District et al. v. Dr. J. W. Edgar, Commissioner of Education of the State of Texas et al.*	The school districts of Fort Worth, Dallas, and Houston and students and parents from each of these three districts.	The State Board of Education and its Commissioner.	Plaintiffs charge that the operation of the State's foundation plan is illegally and unconstitutionally exacting the amount of the local contribution from plaintiff school districts. The State's minimum foundation statute requires that the local contribution be calculated according to its taxpaying ability, and plaintiffs claim that their contribution has not been calculated in that manner, but rather, in a manner that is not uniform and which discriminates against them and which, therefore, violates both their rights to equal protection and to due process under the U.S. Constitution and their rights under the fundamental laws and Constitution of Texas.	Plaintiffs ask the Court to declare the manner by which local taxpaying ability is determined to be unconstitutional and to order the defendants to calculate uniformly local contributions to minimum foundation grants on the basis of each local district's taxpaying ability.	Filed in the U.S. District Court, Northern District of Texas, Fort Worth Division, February, 1970.
Virginia, Bath County *Burns et al. v. Wilkerson et al.*	Students in public schools of Bath County; taxpayers in Bath County.	Public school and finance officials of the State of Virginia; Clerk of the House of Delegates of Virginia.	Plaintiffs are denied equal protection of the law by state laws creating substantial disparities in quality of, and facilities for, education provided in Bath County as compared to other areas of the state. Students and taxpayers of Bath County, where 46% of the residents earn less than $3,000 a year, request an end to educational discrimination related to their poverty. They allege that the education finance system discriminates against them by preventing them from the raising of local tax revenues adequate to provide minimal educational opportunity even while their tax rates are set at the legal ceiling. In addition, they allege discrimination in that the state's educational aid supplements are related to the locality's education spending from local tax sources, a factor actually *increasing* total education resource disparities between school districts. Plaintiffs further allege that the system fails to take into account the added costs necessary to provide substantially equal educational opportunities—buildings, equipment, teachers, books, curriculum—in their rural areas. They state that the Virginia legislature has not made positive attempts to deal with expenditure disparities within the state.	Plaintiffs ask the Court to declare the state formulae for apportionment of education monies unconstitutional and to retain jurisdiction of the action in order to give the legislature a reasonable time to reapportion funds in such a way as to meet equal protection requirements and to direct reapportioning if the legislature fails to act.	A three-judge federal court in the Western District of Virginia dismissed the case, citing the *McInnis v. Ogilvie* decision. The U.S. Supreme Court summarily affirmed the district court opinion.
Wisconsin, Racine *Bellow et al. v. the State of Wisconsin et al.*	Students in public school and their parents.	State of Wisconsin, its Treasurer, and the Superintendent of Public Instruction.	Plaintiffs allege that as a result of the delegation of the power to tax to various state subdivisions created without uniformity of tax base, and the manner of appropriation to the various divisions of sums of money in the state school fund, substantial disparities exist in the quality and extent of public education available in the several school districts of the state. They also allege that state aid fails to compensate to any extent for substantial differences in needs of the school districts, for the varying conditions of school facilities, or for the varying costs of these districts, particularly the extreme expense of providing educational opportunities to those children who live in the extremely disadvantaged urban areas.	Plaintiffs ask that the legislature be given reasonable time to reapportion school districts and that the court make appropriate apportionment of state funds if the legislature fails to act.	Filed in State Court (Dane County Circuit Court). Prosecution of the suit has been delayed indefinitely due to lack of funds.

COURT SUITS SEEKING METROPOLITAN DESEGREGATION

Connecticut, Hartford *Kenyatta Lumpkin et al. v. John Dempsey et al.*	Students and Parents—all of whom are residents of Hartford and are members of either ethnic or racial minorities.	The Chairman, Secretary, and members of the State Board of Education; and the Governor of Connecticut.	Plaintiffs claim that the laws of the State establishing school districts have resulted in racially unbalanced school districts, and that, as a consequence, plaintiffs are denied equal educational opportunity in violation of their rights protected by the equal protection clause of the U.S. Constitution. Plaintiffs further claim that the continuing residential segregation is violating their rights under the 1st, 13th and 14th Amendments to the U.S. Constitution and their rights under the 1866 Civil Rights Act.	The Plaintiffs ask the Court to declare a violation of their constitutional rights under the 1st, 13th and 14th Amendments and their federal rights under the federal laws; to enjoin the defendants from enforcing and executing the State laws requiring each town to be a school district; and, finally, to issue a desegregation order for the entire State.	Filed in U.S. District Court; plaintiffs have been awaiting judge's decision on defendant's motion to dismiss since March of 1970.
New Jersey, Jersey City *Vivian Spencer et al. v. George F. Kugler et al.*	Students from Jersey City and Newark, New Jersey.	The State's Attorney General, Commissioner of Education, and Board of Education.	Plaintiffs allege that the schools of New Jersey are racially imbalanced and that the State has failed to correct either the effects of the racial imbalance or the imbalance itself. Plaintiffs claim that the imbalance and the State's failure to correct it are violations of their federally protected rights, including their rights to equal protection. Plaintiffs further allege that racial balance cannot be achieved without redrawing school district boundaries and that the State has failed to redraw these lines.	Plaintiffs ask the Court for a desegregation order which would require the defendants to redraw school district lines; to submit a plan for compensatory education for those districts which are now racially imbalanced; and to "cease and desist from continuing a segregated system of public schools." The plaintiffs further ask the court to declare the State's school district statute unconstitutional.	Filed in the U.S. District Court, New Jersey, July, 1970.
Virginia, Richmond *Carolyn Bradley et al. v. The School Board of the City of Richmond, Virginia, et al.*	Students and parents from Richmond, Virginia.	The School Board of the City of Richmond, Virginia.	The Plaintiffs claim that the schools of Richmond are racially segregated and thereby violate their U.S. Constitutional rights to equal protection under the law.	The Plaintiffs ask the Court to find that public education in Richmond is being delivered by a dual system of racially segregated schools; to declare the present system unconstitutional as a violation of the U.S. Constitution; and to order the establishment of a unitary system of racially integrated schools.	The suit was filed in U.S. District Court, Eastern District of Virginia. In November, 1970, the defendants filed a motion to join, among others, the school boards of the two adjoining, suburban counties, claiming that the plaintiffs will be unable to obtain "complete and effective relief in this cause unless all three school districts are included within a unitary plan.

LEGISLATIVE PROPOSALS REGARDING STATE SCHOOL FINANCE SYSTEMS & METROPOLITAN DESEGREGATION*

FEDERAL—In November 1970, Senator Ribicoff introduced a bill (S 4545) which, if passed, will require that suburban school districts as well as the city schools they surround be racially integrated according to a single, locally developed plan to be implemented over a ten year period.

STATE—Numerous measures are pending in State Legislatures. For information on these legislative proposals, the following organizations may be helpful:

Educational Commission of the States
1860 Lincoln Ave., Room 822, Denver, Colorado 80203
Attn: Robert McCall

League of Women Voters Education Fund
1730 M St., N.W., Washington, D. C. 20036
Attn: Aaaac Teska

National Committee for the Support of the Public Schools
1424 16th St., N.W., Washington, D. C. 20036
Attn: Marian P. Bendixen

National Education Association
1201 16th St. N.W., Washington, D. C. 20036
Attn: Jean Flanigan, Research Division

GENERAL—The Advisory Commission on Intergovernmental Relations has prepared model legislation for metropolitan school finance (see, *1970 ACIR Cumulative State Legislative Program*, Statute 61-40-00). For more information contact Will S. Meyers, Jr., ACIR, 726 Jackson Pl., N.W., Washington, D. C. 20575

* The legislation mentioned above is neither favored nor disfavored by the Lawyers' Committee; it is listed merely as a guide for anyone who would like to find out about the various proposals.

Information provided by The Lawyers' Committee for Civil Rights Under Law, Washington, D. C.
Additional information can be obtained by writing to:
The Lawyers' Committee for Civil Rights Under Law, 733 15th Street, N.W., Room 520, Washington, D. C. 20005

December 1970

MISSOURI

	St. Louis		Clayton	
	Year, fiscal 1969	Year, fiscal 1970	Year, fiscal 1969	Year, fiscal 1970
Per pupil expenditures:				
Local	$336.83	$366.81	$1,218.36	$1,343.01
State	161.07	199.79	170.18	165.33
Federal	71.04	67.24	11.00	8.05
Total	568.94	633.84	1,399.54	1,516.39
Tax information:				
Assessed value per pupil	$14,008	$14,319	$38,325	$40,306
Assessment ratio (percent)	38.36	38.37	34.87	34.80
Tax effort (in mills)	27	29	35	36
Municipal overburden [1]				
Demographic characteristics:				
Enrollment	124,706	121,856	2,550	2,538
Percent black	63.5	64.4		

[1] School expenditures as a percent of total local budget.

Senator MONDALE. Thank you very much for a most useful statement.

We will take about a 10-minute break here, and then I have some other questions.

(Recess.)

Senator MONDALE. Dr. Coons, in your statement you set forth a formula that you think might be used, for example, in California, based on the *Serrano* principle. On pages 7 and 8, you have an example of how California might respond to the *Serrano* rule and equalize the financial power of each school district.

Would you describe that for the record, if you will?

Dr. COONS. Basically, the idea is to provide each district with the same opportunity and capacity to spend so that, irrespective of whether districts were par in taxable wealth, that the tax rate locally chosen would have the same effect as it would everywhere else in the State.

For example, if the poorest district in the State were to tax itself at 33 mills, hypothetically, and the richest district were to tax itself 33 mills on its local property, that each would have the same number of dollars per pupil to spend.

It could be thought of rather simply, as a table of equivalents. The legislature might enact a table of equivalents in which the left side is a column of permissible tax levies, locally chosen by the local board ranging, let's say, from a minimum of $600 or $700 up to a maximum of, say, $1,800. For each amount that the district might choose to spend on its students, there would be an appropriate local tax levy. Let's say that for 2 percent a district would be permitted to spend $1,000 per pupil. If the 2-percent levy did not raise that much locally, that district would then be subsidized to the extent of the difference. If it raised more in a rich district, the excess over $1,000 would be redistributed to pay for the poorer districts.

Senator MONDALE. So, under that formula, the poorer the district, the more subsidy; the richer the district, perhaps the greater it would subsidize others?

Equality of School District's Effort

Dr. Coons. That is correct. But, in any event, for each and every tax rate, the same spending would be permitted so that there would be an equality of sacrifice among the districts for any given level of expenditure. If you want to spend more, you have to try harder. That is the ethical principle that is involved.

Senator Mondale. So, the political effect would be that a poor district could not go out and campaign for a higher effort, since there will be a nice bundle of State money coming in to match the district's effort, because its valuation is so low that even though it tries, it cannot obtain adequate funds from local sources. The State will make up the difference between the $400, say, it raises per capita and the $1,400 developed in the State formula. The district will get $1,000 per head from the State government.

Dr. Coons. Exactly.

Senator Mondale. But there is just the reverse incentive, however, for the rich district. Are the politicians there going to say, "Let's try harder so more of our money will go somewhere else." And how is that going to work?

Dr. Coons. We have no idea.

Senator Mondale. How would you like to try it?

Dr. Coons. I would like very much to.

It seems to me, looking at today's pattern of spending, Senator, we see poorer districts trying much harder than rich districts. We see them willing to tax themselves to the bone in order to support spending at one-third or one-fourth of the level of the rich districts.

Rich districts are in the habit of saying, "Look how much we care about education; we spend so much here." It would be interesting to find out whether they really do care and are willing to tax themselves at the same rate as the poor districts for that same level of expenditure.

Of course, there are certain problems inherent in that, not the least of them the political problem of recapture from the local district. I am informed by people who know these things that it is politically difficult to establish a system in which, if Beverly Hills is to spend $1,000, it may raise $1,500. It is cosmetically bad politically.

Senator Mondale. You would get a big meeting the night you proposed that.

Dr. Coons. Right. There are, however, ways to diminish this highly visible redistribution.

One of them is first to remove industrial and commercial property from the local tax base—a form of legislation which has been frequently suggested, anyway, and one which is inherently rational.

Tax Industry/Commerce Statewide

That is to say, take a statewide tax of 3 or 4 percent and apply it to all industrial and commercial property. The local levy then would only be on residential property. And the range of wealth among districts would have been squeezed to such a narrow spectrum, compared to the present spectrum, that there would be no problem of recapture.

If you took all the industrial and commercial wealth out of Beverly Hills and the other rich districts in California, the range of local residential wealth per pupil would be sufficiently narrow that you could operate the kind of system that I outlined in my testimony, without having to take any money away from Beverly Hills. That, it seems to me, would be a highly desirable political apparatus.

Senator MONDALE. In the absence of some kind of adjustment, in the rich district, would you not actually be encouraging private schools for the rich? Would they not say, "Well, we are in this trap where we can raise a lot of money to be sent elsewhere, or we can put downward pressure on revenue for our local schools and simply spend all of our money on private schools for our children." Since all the capital costs of constructing private schools is deductible from the taxes anyway, it is sort of publicly supported.

In other words, I am trying to think how the incentives of your program would work. I see the one point you make.

Would not a statewide income tax make more sense than trying to depend principally upon the real estate tax or some other form?

Dr. COONS. Let me say this, that a statewide income tax could certainly be employed either in a centralized or a decentralized manner to provide the necessary funds. There is no question about that.

If you are asking, in a decentralized model, should a local income tax be preferred over local property tax, the answer is likewise "Yes," in my view. Because it seems to me that the income tax——

Senator MONDALE. I am talking about a statewide income tax.

Dr. COONS. You could have both, as a matter of fact. No reason you could not have both.

Senator MONDALE. The income tax has additional advantages. I think it is a better reflection of wealth than a property tax.

PREFERS LOCAL INCOME TAX

Dr. COONS. At least as the property tax is presently structured, there is no question, and that is why we would prefer a local income tax.

May I answer that other question which you had before about the rich district and its disincentives? It is an improtant question.

It depends entirely upon the formula adopted. That is to say, if the relationship between spending and tax is carefully adjusted, and, if industrial and commercial are removed from the local tax base so as to squeeze the wealth spectrum down, it is my judgment that there is no stage at which you would have a powerful incentive for rich districts to opt out of the system. But I think the amount that would already be taken out in personal income and other statewide taxes for the general support of education would be enough so that most people would not be able to afford both the support of public education and private education. At least there would not be a sufficient number of such people that there would be any but a fringe of districts in which the demography would be such that there would be so many very rich people that they would opt out of public education altogether.

And, of course, it is up to the State as to whether they can do that. The State, after all, would set some kind of adequate minimum which every child should have available in public education. A district could

simply drop out, as it were; it would have to stay in the system. Being in and paying for that system, people are going to use it—they are going to have to carry the burden of that local system, and so, there is a powerful incentive to stay in it and make it all work as a public system.

Was I responsive?

Senator MONDALE. Yes.

Would either of the other two witnesses care to respond to this question of what the States should do if the *Serrano* principle becomes law?

Mrs. CAREY. I have a couple of comments on the basis of what Professor Coons has said.

I think the issue you have raised about income taxes is a key one. The experts on property tax, who I gather you are hearing next week, all can tell you how this tax can be administered in a progressive manner, but they cannot point to any community where it is being so administered. So, we have all bought that mythology for 10, 20, or 30 years, and the evidence is piling up that, perhaps, the property tax cannot, in fact, be a progressive tax. This would be a strong persuasion for income tax.

On the suggestion of removing industrial and commercial properties from the local assessment base, I think it would meet with tremendous resistance from the industrial and commercial interests. They have no desire at all to be assessed and taxed at the State level. You look at United States Steel in Gary, Ind., they would fight it tooth and nail to prevent Indianapolis from doing the assessment, as opposed to the local assessor, who works part time for them.

On the private school issue, that is one that everyone kicks around. As a factual matter, I am not sure there's any difference right now between the Scarsdale school system and Scarsdale with a private school system. It is just the admission practices that are slightly different. At present it is a question of buying a house rather than getting into a school.

So, I am not sure that will change things from the way they are at present.

ARE PRIVATE SCHOOLS NONPROFIT?

Another thing to consider is whether, if private schools are actually set up as nonprofit corporations and so on, whether there would not be grounds for attacking them. There is a case, a Lawyers Committee case in Mississippi, *Green* v. *Kennedy*, where white parents tried to set up a school, a private school, for the purpose of avoiding integration, and the court knocked down their tax exemption on the ground that it was a deliberate evasion of the constitutional mandate.

Now, if the Constitution declares education to be a fundamental interest, it might be you could attack private schools on that ground.

Senator MONDALE. The key to the *Green* case was deliberate segregation, white flight, designed to escape the court order.

Mrs. CAREY. That is right.

Senator MONDALE. You might say there is a similar constitutional principle, and that no one can escape the public schools. Maybe that will be the law.

Go ahead.

Mrs. CAREY. That is roughly what I wanted to say.

Dr. YUDOF. I can add to the confusion, because I am not exactly sure how Professor Coons' scheme would work. One of the things that worries me is the fact that it seems, to me, it is difficult to tell a child or a family that lives in a particular community that you are not going to have equal educational opportunity—as measured in the resource allocation—by virtue of the fact that your neighbors happen not to have children; or, for some other reason, have some value prejudice against funding education.

In some sense, I am not sure that a community's values expressed under this type of equalization scheme are any more legitimate than the criteria which the California Supreme Court has brought out. And for that reason, I personally would be much more inclined toward this type of State income tax that you have described. And, in some sense—I have not totally thought it through—I might be in favor of separating the financing function from the education function; that the district will have, in fact, wide discretion to make educational policy decisions, but the basic question of funding should be something which should be done on a statewide basis.

Senator MONDALE. Let me ask you a reactionary question. There are a few things that are working fairly well. Silberman says the rich suburban schools are joyless, but, quite apart from that, I think those people agree that in this country there are excellent schools; the wealthy suburban schools are awfully good. Do we not ruin something in this country if, through some kind of equalization of financing, we pulled down the quality of suburban schools and lifted up the quality of some of the others? Do we not impose sort of a dull uniformity on the school system?

USE RICH SUBURBAN SCHOOLS AS NORMS

I would like to pursue a strategy of using the rich suburban schools as a yardstick, and then try to get the other schools up to that level, rather than trying to create kind of a broad, statewide, uniform kind of financing, with, if I may say so, an incentive to the suburbanites, if they want a better school system, to tax themselves so that most of the increase goes somewhere else.

In other words, my instincts tell me that we should not try to diminish the quality of suburban schools. We should try to bring the others up to that level.

Dr. COONS. The only thing I find troublesome in that statement is that you labeled it "reactionary". It seems to me the really reactionary principle is to homogenize all education.

Senator MONDALE. As a matter of fact, one of your key points is choice, which is the de-homogenization.

Go ahead.

Dr. COONS. It seems to me there are many ways to get choice. This is perhaps the least desirable of a number of opportunities for choice that *Serrano* opens up.

But, it seems to me fair to argue, as Professor Yudof suggests, that a child and his parents may feel aggrieved if their neighbors do not vote as high a tax rate in their district; and, therefore, the expenditure is somewhat lower.

That is the pattern one would expect for districts will not all behave the same, presumably, given the same opportunities. They will not tax themselves all at the same level. Still, if that pattern which now favors the wealthier is broken up so that the differences in spending levels no longer reflect the wealth of the districts, it is also true that families may choose to live in areas which emphasize various mixes of public service, including education, without having that choice tied to their personal wealth. I think that is an extremely important point.

Also, I just find that the democratic process on the local level, in reaching different conclusions about how much education should be emphasized is, to me, a perfectly acceptable process; that is, for neighbors to get together and make different judgments about education is certainly not something that one can think of as intrinsically invidious. In a relatively low-spending district, if more money is left over for swimming pools, parks, museums, and libraries, that seems prima facie a rational choice made by people on a free basis, so long as wealth does not determine it.

Senator MONDALE. Do you have any doubt that the *Serrano* principle of equality is fully applicable, if not more clearly so, in intradistrict decisions as it is interdistrict?

Dr. COONS. I think it is applicable, though distribution on the basis of wealth would in such a case be much more difficult to prove. I should add that what Mrs. Carey said about property tax is very important. We have never had a concerted legal effort against the abysmal apparatus for enforcing the property tax. And what Mr. Morgan and his people are doing in Dallas and Fort Worth is a very important step. This is the case to which Mrs. Carey referred. The lawyer who organized that is a man named Cecil Morgan. The complaint might be interesting to the committee. It is an elaborate complaint with interesting facts about the property tax in Texas. And, if that attack is successful, and it may very well be successful on State grounds—I mean, there is no reason to even have to resort to the Federal Constitution in this case—it seems to me it could begin a movement for rationalizing the property tax and all kinds of State levies; ultimately this could produce a much fairer system of schools and all other kinds of municipal services.

Senator, at some point could we talk about community control?

Senator MONDALE. Go ahead.

COMMUNITY CONTROL

Dr. COONS. Something Mrs. Carey said I think is, again, very important in this regard. There is a kind of dilemma which might be developing here between community control on the one hand, and desegregation on the other, which, to some extent, the *Serrano* principle will aggravate.

That is to say, if the principle that the quality of education may not be a function of wealth is adopted and applied in a decentralized way by a State like New York, there is no reason economically, fiscally, that an area like Ocean Hill-Brownsville could not be given the same capacity to raise money as Scarsdale. Ocean Hill-Brownsville and similar poor neighborhoods could now become as independent as have been the rich, white suburbs. And intrinsically, there is no reason to

think that they should not be, unless there is another policy at stake, to wit, desegregation.

Senator MONDALE. In other words, at the point Brownsville becomes viable financially, the appeal for community control might be much stronger than for desegregation?

Mrs. CAREY. It works two ways. I do not think that is the only obstacle. I think the other obstacle is the resistance of the white communities. The myth of the suburbs previously has been: "We want to have the power to enforce our zoning laws" and that sort of thing, because the costs of absorbing the disadvantaged people are so great in terms of services. The cost increases——

Senator MONDALE. It is not entirely a myth, is it?

Mrs. CAREY. If *Serrano* is carried out——

Senator MONDALE. But, I mean right now.

Mrs. CAREY. I am not denying there are costs, but I think they are often used to camouflage resistance that is based on racial or class lines other than just costs.

What I think Professor Coons is getting at, is that you could have the two communities adjacent to each other, one white, one black, each with fairly well financed schools and maybe still find the white resistance to accepting blacks, if the blacks want to move. On the other hand, you may find a reluctance on the part of the blacks to move, because they want to have their own power.

Senator MONDALE. I think a lot of the black leadership is saying now that, "We are coming close to controlling some of the center cities politically, and now *Serrano* comes along and says we are going to have enough money to educate our children, and now you say, 'We are going to move you out'."

You are hearing more of that from black leadership—that integration appeals to them less and less and community control more and more. That is the impression I am getting.

Dr. COONS. It is possible, I suppose, to imagine an apparatus which would permit inner city people to move out, voluntarily at least, to districts spending at levels different from theirs and have an adjustment made according to the formula on the basis of that pupil's attendance rather than his residence. That is to say, a child who wanted to travel daily to Scarsdale, or even, indeed, who was bused involuntarily could be counted in the Scarsdale tax base. Scarsdale could be given the same kind of subsidy that the child would trigger if he lived in Scarsdale. Such a trade-off could probably be worked out in the formula.

But it does become considerably more complicated than the kind of thing I was suggesting before. So, I think it is fair to worry that there may be some opportunity for collision of policies here.

May I also suggest something else? I had forgotten in my original remarks something that I think this committee might suggest to its colleagues.

CONGRESSIONAL ACTION ON SERRANO STANDARDS

Congress has, of course, the duty and power under the 14th amendment to engage in the enforcement of constitutional right, under the 14th amendment, section 5. And I would think that that might be an area, as with voting, which would be highly appropriate, even absent a U.S. Supreme Court decision on the question, for the Congress

to define the meaning of the Constitution and to enforce that meaning of the Constitution, either through constraints on spending and/or through the creation of standing to sue either in private parties or the Attorney General.

I do not know what the politics of that are. I do not have any idea what the chance for success would be. But, it would not be difficult to draft such a policy precisely in terms of the *Serrano* standards, and then to set together apparatus such as was created for the voting rights, which, as you know, the Supreme Court in *Morgan* v. *Katzenbach* declared perfectly appropriate; indeed, they avoided decision on the substantive issue, the constitutional issue, because Congress itself had undertaken to enforce, to define and enforce the right.

I would like to hear if my own colleagues were interested in speaking on that.

Senator MONDALE. Would you care to submit proposed language for such a standard?

Dr. COONS. I would be happy to, Senator.

Senator MONDALE. All right.

Dr. COONS. If you will give us enough time to put something together.

Senator MONDALE. We will be around here a long time.

Dr. COONS. I will see if I can exploit one of my students.

Senator MONDALE. We are trying very hard to write into the school desegregation bill a private enforcement remedy to permit private attorneys to bring desegregation lawsuits, lawsuits affecting constitutional rights of students, which would set aside a portion of the desegregation money to pay fees, appellate costs, et cetera. But we lost that on the Senate floor. But a fairly reasonable substitute, the Cook amendment, allows payment of attorneys' fees at the discretion of the court, if it determines that the lawsuit was necessary to enforce a constitutional right.

PRIVATE ENFORCEMENT PROVISION

I do not quite know how it would work out, but I think it is progress. I am convinced that, in any of these fields which do not have a commercial basis to them, the Congress, if it means business, must couple any of its proposals with a mechanism to encourage private enforcement. Otherwise, it is just not being done. And that is where the resistance is taking place. They are trying to destroy the legal services program so they can only bring nice lawsuits. They fought very hard against this enforcement provision on desegregation. That was the key point in the lobbying effort. That is where we lost. As a matter of fact, that is the only key provision of the bill we did lose.

They are now trying to duck the class action program for consumers under the same principle. They are trying to deny the Consumer Advocacy Agency the right to participate in those proceedings.

Of course, one of the key issues in the EOC extension has been a whole new set of private enforcement remedies in the Senate version, including payment of fees in administrative proceedings. They are very alert to what kind of trouble it is going to mean, because it would mean law and order in a new field where human problems are concerned.

I think the law schools ought to help us generate the case for effective private enforcement.

Now, there is some precedent for this. The Public Accommodations Act is one of the most successfully implemented sections of the Civil Rights Act, and one of the key reasons is that the defendant knew he was going to get socked with a private lawsuit and have to pay for the fees and a fine to boot. Within months, that Public Accommodations Act was enormously successful.

I do not think we have really faced up to that. It is a scandal what is going on in the civil rights field, of course. The Justice Department is not enforcing anything. The *Green* case that you talked about, the Internal Revenue Service has promised us time and again they are going to bring lawsuits. In fact, they have not done a thing. They have taken a negative position.

Mrs. CAREY. The idea Professor Coons has just outlined is described more extensively in my written testimony.

The idea of having some sort of provisions analogous to the Voting Rights Act—it is an area we have been working on, and it is another area of copout by this administration in terms of failure to exercise the Federal role. That act has really been of tremendous assistance in private suits for reapportionment, for registration drives, and so on. And I think that is a very powerful analogy, one that should be considered seriously in this field.

Senator MONDALE. In the Voting Rights Act, are the plaintiffs awarded fees?

Mrs. CAREY. No; there are no attorney fees. It would be far better to get attorney fees. The act did not specifically provide for the private right to sue.

Senator MONDALE. That is the *Morgan* v. *Katzenbach* case where the private right was clearly established?

Mrs. CAREY. Yes. But I think it should have been clearly spelled out from the beginning, and attorney fees should be provided, if possible, to cover the costs of the case.

Senator MONDALE. Right.

Dr. YUDOF. I wanted to add that there has been tremendous difficulty in litigating precisely because of the failure to specify private actions were permissible under the legislation. We found a number of courts were willing to allow private parties to bring their suits; but, on the other hand, there have been a number of courts which have raised jurisdictional and standing issues which have prevented parents and Title I children who are not, in fact, receiving the benefits under that law from raising the issue.

Senator MONDALE. This runs through all the educational programs, the Johnson-O'Malley distribution for Indians, the Title I funds, the migrant funds—all these programs are in profound trouble, and we have simply got to get some kind of private enforcement.

Dr. COONS. Senator, would it be appropriate to address a few remarks to family choice systems? Is there time for that?

Senator MONDALE. Sure. Go ahead.

FAMILY CHOICE SYSTEMS

Dr. COONS. When we talk about equality of educational opportunity, we often talk only about giving the poor equality, but almost never about giving them opportunity in the same sense that my children

ave opportunities. My four school-age children go to the Berkeley ublic schools, but certainly, if I wanted to, I could send them to pri- ate schools. Someday I might.

The point is that for us rich people there is the whole spectrum of school options. But, for the poor, even if we succeed in implementing all that *Serrano* stands for plus every other policy that we think appropriate to recognize special qualities of children, still all that we have done is to say from the center, from Government, "You, child of the poor, will have the following kind of education and the following amount of money spent on you."

Nobody in all of this asks the parents, "What are your interests in education?" Nor asks the child, "What are your interests in education?" "Are you willing to spend a little more and to do something extra, or even would you like something extra, or something different?"

Senator MONDALE. I think of those Chinese children in San Francisco who are being bused to schools where the teachers cannot speak Chinese—and I assume most of the children speak only Chinese. We have decided they are going to go to those other schools.

Dr. COONS. There is another dilemma for you.

Senator MONDALE. Of course, it is a court decree, but, once again, I assume those children's parents do not have the money to exercise the options that the rich Chinese do.

Dr. COONS. That is correct.

Senator MONDALE. So, we deliver up only one meal to the poor, and they will either eat it or starve.

Dr. COONS. If I were interested in avoiding integrated schools, I could find a way, because I can afford to do that. And, thus, we have educational freedom for the rich but compulsion for the poor, this despite what is the essential equality of children.

Children, it seems to me, deserve an equality of treatment that no one would insist upon, with respect to adults, and this is equally true with respect to their early education.

RESPONSIBILITY AND DIVERSITY IN CHOICE

I think Congress ought to take very seriously the suggestions that have been made for giving poor families opportunities to make a choice. There is a very wide variety of suggestions and opportunities in this respect. Some schemes, would ask poor families to make a small contribution, would begin the process of making all of us contribute something to our own education, even publicly financed education. Most voucher plans would not require such contribution. In any event, all such schemes would provide families with a range of public and private options, including religious schools if the Supreme Court permits it. We don't know the answer to that yet, of course.

Dr. YUDOF. I do not have very much to add. I think I would be very much in favor of the scheme Professor Coons has just outlined. Among other things, it overcomes my initial difficulty with the power equalizing scheme, and that is, the responsibility is placed where it belongs, at the family level. And, if that family, and in terms of its decisions about what it wants for its children, is not dictated by any outside sort of structure, governmental or otherwise, it seems to me it would go a long way.

The other aspect—I assume most of the plans that have been advocated for a family power equalization of sorts look to the creation of a certain form of diversity and a certain competition in our educational systems, and I think that it's very important, that if a family is given some sort of a voucher, some sort of power to purchase educational services, one would hope there would be some competition for the vouchers from those families; that public schools would then be competing with religious and private schools and nonsectarian private schools; and that, in effect, there would be a competition which would make the quality of the services much better in all our educational institutions, and you would not have what you have now; essentially the schools operate like any monopoly. They have a captive audience. This captive audience is so captive, parents can be prosecuted if the children do not show up for the requisite 10 years or whatever it is.

So, I think that is a very good idea.

Mrs. CAREY. I think it is a good idea on the broad level, as you have suggested, in terms of all the needs. You have the same problem in the health area, the same problem with food stamps, jobs, and other things. Although I think it is a sound long-term goal, there are just so few choices right now, the choice in some communities is between the public school and the next door public school, both inferior. It would take a tremendous investment to generate the choices before you even gave people the decisionmaking power.

So, I think it is a great goal, but it seems to me awfully remote.

I would like to kick in an approach that has been tried in one State, since we are sort of covering the field.

SPECIAL LANGUAGE AND CULTURE SCHOOLS

Hawaii, as I understand it, apart from being the only State that is centralizing the funding of schools, has a system that reflects the cultural differences in the State. The State has special schools that are language and culture schools; in the afternoon, after the regular school. So, if you are Japanese, you can go to the Japanese language school; and if you are a native, you can go to the Hawaiian language school, or Chinese, whatever your background may be.

This has been done privately in other communities for religious purposes but never in terms of the cultural interests. That really introduces an element of choice of a different kind and recognizes that we are, in fact, a multicultural society.

Senator MONDALE. Berkeley has developed subsystems like "black house" that recognize these differences, and which are controlled by the cultures.

Last month, or the month before, when we were fighting over impact aid for Indians——

Dr. COONS. You are speaking to the world's greatest expert on the subject, Senator. Professor Yudof has done the most basic work in this area.

Senator MONDALE. Do you want a job?

Dr. YUDOF. I have one, thank you, Senator.

IMPACT AID

Senator MONDALE. There was a proposal made to the Senate Labor Committee to do away with the impact aid and come up with a brand-

new sort of Indian Title I. And I was surprised—some of the most progressive Indian educators came and said, "Don't do that." They said, right now the average Indian near a reservation has $700 or $800 riding on his head because they are in the general impact aid program, and that has been rising. But 15 years ago, nobody wanted an Indian student. Now the high schools and the elementary schools in and around the reservation are all fighting for them. They want to keep them there. They want them happy, and they want the parents happy. Everybody likes Indians.

That is sort of an interesting development.

Mrs. CAREY. Maybe we should try it across the board with other minorities.

Senator MONDALE. Yes; if you could have a system where the poor could be given some kind of personal bonus that would go with them wherever they went to school, there might be tremendous competition and tremendous variety at the same time. And the schools which did the best—which is what we should want—would get the most.

Dr. COONS. I think that was the original theory that Dean Sizer employed in his design for vouchers. His objective was to take the Title I money, which he saw was going to be very difficult to get to the children for whom it was designed, and give it to them, give the children the money outright in an educational chit of some kind, which they could take to the school of their choice. Children of the poor would be attractive to the school for that reason. And it would be clear that the money would get to the consumer for whom it was intended.

Dr. YUDOF. Senator, there is an interesting sidelight to what you were saying. In Texas, there was a recent decision involving two school districts, San Felipe and Del Rio.

The net result in that case, in any event, was the fact that the students from the Air Force base were being transported across a predominantly Chicano district to a predominantly white district and bringing all the impact aid funds with them. Now, the minute the court said that that is not permissible under the Constitution, that those children must attend school in what was previously the poor district, and they may not be transported out, and all the impact aid dollars must go to the poor district—immediately there was a petition intervening in the case and a motion to consolidate the two districts, which the court promptly granted, because it was clear to the rich district that it could not survive economically without those impact aid funds which were coming in for some years. I think that is a good example of what this kind of chit can do.

Senator MONDALE. Thank you.

The committee is in recess, subject to the call of the Chair.

(Whereupon, at 12:15 p.m., the Select Committee was recessed, to reconvene at the call of the Chair.)

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